CONTRACT DOCUMENTS AND SPECIFICATIONS

FOR CONSTRUCTION OF

Lift Station Rehabilitation Project No. 1

Vol. I

Issued for Bid

LMWD Bid # LS-21-3-01

TWDB Project No. 73730 CID-03

May 2021

FREESE AND NICHOLS

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FNI Project No. LMW19354

00 01 07 DESIGN PROFESSIONAL SEALS

	Specification Sections Sealed
	DIVISION 00, 01
FREESE AND NICHOLS, INC. TEXAS REGISTERED ENGINEERING FIRM F-2144	

END OF SECTION

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DIVISION 00

PROCUREMENT AND CONTACTING REQUIREMENTS

00 11 16 INVITATION TO BID

ARTICLE 1 – GENERAL NOTICE

1.01 The Laguna Madre Water District (Owner) is requesting Bids for the construction of the following Project:

Lift Station Rehabilitation Project No. 1
Laguna Madre Water District Bid # LS-21-3-01

1.02 Description of the Work

A. Rehabilitation of one (1) wastewater lift station (15) including piping modifications, pump replacement, electrical and site civil work.

B. Replacement of three (3) wastewater lift stations (4, 17, 35) including wet well, pumps, piping and appurtenances, electrical and site civil work.

C. Installation of approximately 1,840 linear feet of 16" force main at Lift Station No. 11.

D. Installation of approximately 1,020 linear feet of 6" force main at Lift Station No. 17.

E. Installation of approximately 480 linear feet of 6" force main at Lift Station No. 25.

F. Installation of approximately 1,325 linear feet of 8" gravity main along SH-100.

G. Installation of approximately 1,100 linear feet of 18" gravity main to decommission Lift Station No. 30.

H. Replacement of approximately 90 linear feet of 18" PVC gravity main on Hickman Boulevard.

ARTICLE 2 – EXAMINATION AND PURCHASE OF DOCUMENTS

2.01 Advertisement and bidding information for the Project can be found at the following procurement website:

https://www.civcastusa.com

2.02 Prospective Offerors must register with the procurement website as a plan holder, even if the Contract Documents are obtained from a plan room or other site. All official notifications, Addenda, and other documents will be offered only through the procurement website.

2.03 The Contract Documents may be downloaded from the procurement website by prospective Offerors registered as plan holders. Offerors are responsible for ensuring that a complete set of documents, as defined in Section 00 52 13 "Agreement," are used in the preparation of their Bids. The documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download does not confer a license or grant permission or authorization for any other use. Authorization to download documents includes the right for Offerors to print documents for their sole use, provided they pay all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.

2.04 The procurement website will be updated periodically with Addenda, lists of interested parties, reports, or other information relevant to submitting a Bid for the Project.

2.05 Printed copies of the Contract Documents, Technical Data, and other information may be examined free of charge at the following address:

Laguna Madre Water District
105 Port Road
Port Isabel, Texas 78578
Hours Available for Viewing: 8 am – Noon and 1 pm – 5 pm

ARTICLE 3 – PRE-BID CONFERENCE

3.01 A non-mandatory pre-bid conference for the Project will be held at 1:00 PM, local time, on June 16, 2021 at the following address:

Laguna Madre Water District
105 Port Road
Port Isabel, Texas 78578

Videoconference information will also be provided for those who cannot attend in person. Access instructions for the pre-bid video conference will be posted on the procurement website.

ARTICLE 4 – SITE TOUR

4.01 A tour of the Site will be held the after the pre-bid conference. Prospective Offerors attending this site tour are required to arrange their own transportation to the Site.

4.02 A tour of the Site(s) may be coordinated with:

Charles Ortiz, P.E.
Laguna Madre Water District
cortiz@lmwd.org
Phone: (956) 943-2626 Ext. 130

ARTICLE 5 – QUESTIONS REGARDING BIDDING PROCESS OR SOLICITATION DOCUMENTS

5.01 Questions are to be submitted using the question and answer process on the procurement website. Responses to questions posted on the procurement website will be posted for the benefit of all Offerors. A response will be posted for questions submitted until 12:00 p.m. on June 23rd, 2021.

5.02 A response to a question posted on the procurement website that requires modification of the Contract Documents will be made by Addenda. Modifications to the Contract Documents prior to the award of the Contract can only be made by Addenda. Only answers in Addenda posted on the procurement website will be binding. Oral and other interpretations or clarifications will be without legal effect.

ARTICLE 6 – BID SECURITY

6.01 Offerors must submit an acceptable Bid Security with their Bids as a guarantee that the Successful Offeror will enter into a contract for the Project with the Owner within 15 days of Notice of Award of the Contract. The Bid Security must be payable to Laguna Madre Water

District in the amount of 5 percent of the proposed Contract Price. The Successful Offeror must execute the Contract and bonds on the forms provided in the Contract Documents and provide evidence of insurance as required by the Contract Documents.

6.02 Bid Security must be in the form of a bid bond. The bid bond may be submitted on the form provided in Section 00 43 13 "Bid Bond" or Offerors may provide their surety's standard penal sum bid bond form. The bid bond must reference the Owner and the Project by name as identified in this Section.

ARTICLE 7 – DELIVERY OF BIDS

7.01 Sealed Bids must be delivered to the Owner at the address below no later than 2:00 PM on June 30, 2021 to be accepted. Hard copies must be provided. Bids received after this time will be returned unopened. Address Bids to the Owner as follows:

Laguna Madre Water District
Attn: Enrique Samaniego
105 Port Rd.
Port Isabel, TX 78578
Lift Station Rehabilitation Project No. 1 – LMWD Bid No. LS-21-3-01

7.02 The Bids will be publicly opened and read aloud via video conferencing, including the names of the Offerors and their Bids. The bid opening will be conducted on June 30, 2021 at 2:05 PM, local time. Access instructions for the bid opening video conference will be posted on the procurement website.

ARTICLE 8 – AWARD OF CONTRACT

8.01 It is the intent of the Owner to award this Contract to the lowest responsible Offeror. The Owner reserves the right to adopt the most advantageous interpretation of the Bids submitted in the case of ambiguity or lack of clearness in stating bid prices, to reject any or all Bids, and/or waive formalities. Bids will remain subject to acceptance and may not be withdrawn within sixty (60) days from the date on which Bids are opened.

ARTICLE 9 – OTHER CONTRACT REQUIREMENTS

9.01 Selected Contractor will be required to pay the prevailing wage rates established for this Project in accordance with the Contract Documents and Tex. Gov't Code Chapter 2258.

9.02 Performance and payment bonds will be required for this Project.

9.03 This project will be funded by the Clean Water State Revolving Fund provided by the Texas Water Development Board (TWDB). This contract is contingent upon release of funds from the Texas Water Development Board.

Any contract or contracts awarded under this Invitation for Bids are expected to be funded in part by financial assistance from the TWDB. Neither the U.S. Environmental Protection Agency (EPA) or the State of Texas, nor any of its departments, agencies, or employees are or will be a party to this Invitation for Bids or any resulting contract.

9.04 Any contract(s) awarded under this Invitation for Bids is/are subject to the American Iron and Steel (AIS) requirements of Section 608 of the Federal Water Pollution Control Act.

9.05 This contract is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) businesses. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps.

For more details of the DBE Program and the current, applicable fair share goals, please visit http://www.twdb.texas.gov/dbe.

9.06 Equal Opportunity in Employment - All qualified Applicants will receive consideration for employment without regard to race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age (40 or older), disability, or genetic information. Bidders on this work will be required to comply with the Department of Labor regulations at 41 CFR Part 60-4, relating to Construction Contractors--Affirmative Action Requirements, which include the President's Executive Order No. 11246, as amended by Executive Order No. 11375 and Executive Order No. 13672, in the award and administration of contracts awarded under TWDB financial assistance agreements. Failure by the Contractor to carry out these requirements is a material breach, which may result in the termination of the awarded financial assistance.

9.06 Owner reserves the right to reject any and all bids.

9.07 Davis-Bacon prevailing wage requirements apply to the construction, alteration or repair of treatment works carried out, in whole or in part, with assistance made available by the Clean Water State Revolving Fund (CWSRF).

The Davis-Bacon prevailing wage requirements apply to Contractors and Subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration or repair (including painting) of a treatment works project under the CWSRF.

For prime contracts in excess of $100,000, Contractors and Subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The Fair Labor Standards Act may also apply to Davis-Bacon covered contracts.

Any contracts or subcontracts in excess of $2,000 must include the provisions of the Davis-Bacon Wage Rate Requirements found in TWDB Guidance No. DB-0156.

Wage Determinations - U.S. Department of Labor (DOL) wage determination must be included in the bidding and contract documents. DOL wage determinations may be obtained online at http://www.wdol.gov/.

Once it is determined that Davis-Bacon wage rates will apply to a construction contract, the Applicant must state in the solicitation that Davis-Bacon prevailing wage rates are applicable and bid packages must include the current Davis-Bacon general wage determination for the area where construction will occur. While the solicitation remains open, the Applicant must monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current.

The Applicant must amend the solicitation if the DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Applicant may

request a finding from TWDB that there is not reasonable time to notify interested Contractors of the modification of the wage determination.

For additional information on Davis-Bacon Wage Rate Requirements and its applicability to this contract, please consult TWDB Guidance No. DB-0156.

END OF SECTION

00 21 13 INSTRUCTIONS TO OFFERORS

ARTICLE 1 – DEFINED TERMS

1.01 The terms used in these Instructions to Offerors have the meanings assigned to them in the General Conditions and Supplementary Conditions.

ARTICLE 2 – RECEIPT OF BIDS

2.01 Refer to Section 00 11 16 “Invitation to Bid” for information on receipt of Bids.

ARTICLE 3 – COPIES OF CONTRACT DOCUMENTS

3.01 Obtain a complete set of the Contract Documents as indicated in Section 00 52 13 “Agreement.”

3.02 Use complete sets of Contract Documents in preparing Bids. Offeror assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.

3.03 Owner makes copies of Contract Documents available for the sole purpose of obtaining Bids for completion of the Project and does not confer a license or grant permission or authorization for any other use.

ARTICLE 4 – QUALIFICATIONS STATEMENT

4.01 Submit information as required in Section 00 45 13 “Qualifications Statement” with the bid.

ARTICLE 5 – EXAMINATION OF THE CONTRACT DOCUMENTS AND THE SITE

5.01 Examine the Contract Documents, the Site, and other information readily available before submitting a Bid.

A. Examine the Contract Documents and supplemental data:

1. Carefully study the Contract Documents.
2. Carefully study supplemental information, including Technical Data, record drawings from previous projects, available utility maps, reports, and studies referenced or made available to the Offeror.
3. Promptly notify the Construction Manager of all conflicts, errors, ambiguities, or discrepancies that the Offeror discovers in the Contract Documents, Addenda, and supplemental information.
4. Determine that the Contract Documents, Addenda, and supplemental data are generally sufficient to indicate and convey understanding of all terms and conditions for completion of Work to the degree necessary to prepare a Bid for the Project.
5. Make observations and investigations, correlate knowledge and observations with the requirements of the Contract Documents, and consider these in preparation of a Bid for the Project.

B. Become familiar with all federal, state, and local Laws and Regulations that may affect cost, progress, or the completion of Work.

C. Visit the Site to become familiar with any general, local, or Site conditions that may affect the cost, progress, or performance of the Work in any manner. The Site is generally accessible to the public. Coordinate access to private property through the Owner. A tour of the Site will be conducted at the pre-bid conference.

D. Subsurface exploration using a backhoe, drilling rig, or other equipment can be done, providing the following procedures are followed:

1. Contact the following individual to coordinate the details for the subsurface exploration:

   Charles Ortiz, P.E.
   Laguna Madre Water District
   cortiz@lmwd.org
   Phone: (956) 943-2626 Ext. 130

2. Backfill excavation with material acceptable to the Owner and process backfill to prevent future settling.

3. Pay all costs for soils investigation including the cost for excavation, backfill, access, and testing.

E. The submission of a Bid will constitute an incontrovertible representation by the Offeror that the Offeror has complied with every requirement of this Article, and that without exception the Bid is premised on the following:

1. Work will be completed in accordance with the Contract Documents for the Contract Price within the Contract Times;

2. Offeror has given the Construction Manager written notice of all conflicts, errors, ambiguities, and discrepancies that the Offeror has discovered in the Contract Documents, Addenda, and the related supplemental data;

3. Written resolutions provided by the Construction Manager are acceptable to the Offeror; and

4. Contract Documents, Addenda, and the related supplemental data are generally sufficient to indicate and convey understanding of all terms and conditions for completion of Work.

ARTICLE 6 – PRE-BID CONFERENCE

6.01 A non-mandatory pre-bid conference will be held at the time and location indicated in Section 00 11 16 “Invitation to Bid.”

ARTICLE 7 – INTERPRETATIONS AND ALTERNATE BIDS

7.01 Submit all questions about the meaning or intent of the Contract Documents, Addenda, and the related supplemental data to the Construction Manager using the procurement website as indicated in Section 00 11 16 “Invitation to Bid.”

7.02 Submit any offer of alternate terms and conditions or offer of Work not in strict compliance with the Contract Documents to the Construction Manager no later than 10 days after the date Project is advertised. Construction Manager and Design Professional will issue Addenda as

appropriate if any of the proposed changes to the Contract Documents are accepted. A Bid submitted with clarifications or taking exceptions to the Contract Documents, except as modified by Addenda, will be considered non-responsive.

7.03 Offeror may submit a separate and additional Bid if the Offeror includes exceptions or the Offeror wishes to make a Bid that is not in accordance with the terms and conditions of the Contract Documents, or for Work that is not in strict compliance with the Contract Documents. Describe the intent and substance of the changes in the additional Bid in adequate detail so they are clearly understood. Alternate Bids will not be considered in the evaluation of the Bids. Upon selection of the Bid of the lowest responsible Offeror, and after the award of the Contract, the Construction Manager may issue a Request for a Change Proposal if Owner chooses to accept any Bid alternates.

7.04 Addenda may be issued to clarify, correct, or change the Contract Documents, Addenda, or the related supplemental data as deemed advisable by the Owner or Designer.

ARTICLE 8 – BID SECURITY

8.01 Offerors must submit an acceptable bid bond as Bid Security with their Bids as required by Section 00 11 16 “Invitation to Bid.” The acceptable bid bond must be issued by a surety legally authorized to do business in Texas and meet the requirements of the General Conditions.

8.02 Owner may annul the Notice of Award and retain the Bid Security of the apparent Successful Offeror upon Offeror’s failure to execute and deliver the Agreement or Amendments to the Agreement.

8.03 Bid Securities are to remain in effect until the Contract is executed. Bid bonds will become void when the Contract is awarded, or all Bids are rejected.

ARTICLE 9 – CONTRACT TIMES

9.01 See applicable provisions for Contract Times in the Agreement.

9.02 The Project must be completed no later than the dates indicated in Section 00 52 13 “Agreement”. These dates will be used to calculate the Substantial Completion and Final Completion dates from the date of the Notice to Proceed and will be used to define the Contract Times. Liquidated damages as defined in the Agreement will start to accrue after these dates.

ARTICLE 10 – LIQUIDATED DAMAGES, RETAINAGE, AND INTEREST

A. Provisions for liquidated damages and the payment of retainage and interest are set forth in the Agreement.

ARTICLE 11 – PREPARATION OF THE BID FORM

11.01 The Bid Form is included with the Contract Documents and is also available at the procurement website. Complete all blanks on the Bid Form by typing or printing in ink. Indicate prices for each item or alternate shown in the Bid Form.

11.02 The unit price governs if a conflict exists between the extended amount derived by multiplying the unit price by the stated quantity of units and the extended amount shown in the Bid Form.

11.03 Execute the Bid Form as indicated in the document and include evidence of authority to sign.

11.04 Acknowledge receipt of all Addenda by filling in the number and date of each Addendum. Provide a signature as indicated to verify that the Addenda were received. A Bid that does not acknowledge the receipt of all Addenda may be considered non-responsive.

11.05 Provide the name, address, and telephone number of the individual to be contacted for any communications regarding the Bid in the Bid Form.

11.06 Provide evidence of the Offeror's authority and qualification to do business in Texas or agree to obtain such qualification prior to award of the Contract. Failure to obtain this qualification will render the Bid non-responsive and Offeror will forfeit its Bid Security.

ARTICLE 12 – CONFIDENTIALITY OF BID INFORMATION

12.01 The Owner is a governmental body subject to the limitation of Tex. Gov't Code Chapter 552 and has limited obligations with regard to protecting confidential information submitted by Offerors. Bids will be opened in a manner that avoids disclosure of trade secrets and confidential information to competing Offerors and keeps the Bids from the public until a contract is awarded. The Owner will protect trade secrets and confidential information to the extent allowed by Laws and Regulations.

12.02 Clearly indicate which specific documents are considered to be trade secrets or confidential information by stamping or watermarking all such documents with the word "confidential" prominently on each page or sheet or on the cover of bound documents. Place "confidential" stamps or watermarks so that they do not obscure any of the required information on the document, either in the original or in a way that would obscure any of the required information in a photocopy of the document. Submit all confidential information in a different binder so this confidential material is separate for the rest of the Bid.

12.03 The Owner, upon receiving an application or other request for the disclosure of confidential information, will promptly notify Offeror of the request as required by Section 552.305 and request a ruling by the Texas Attorney General as to whether any such information may be released.

12.04 Offeror acknowledges and agrees that it will be solely responsible for submitting any arguments, authorities, or other information to the Attorney General of Texas regarding release of the information marked as confidential as provided by Section 552.305(b) and that if disclosure is required, the Owner has no liability for releasing this information and Offeror will not be entitled to exercise any remedy for a disclosure made pursuant to the Chapter 552.

12.05 The obligations of the Owner as recipient with respect to confidential information under the terms of this Agreement are subject to the following exceptions:

A. If confidential information becomes a part of the public domain through publication or otherwise but through no fault of the Owner;

B. Owner can demonstrate through suitable documentation that the confidential information was already in the Owner's possession or otherwise publicly available prior to the date of disclosure hereunder;

C. The confidential information is subsequently disclosed to the Owner by a third party who has a lawful right to disclose such information; or

D. The Owner is required to disclose the confidential information by court order or by applicable law.

12.06 If the Owner is requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, public information requests, including requests under Chapter 552, or similar process) or is required by a regulatory body to make any disclosure that is prohibited or otherwise constrained by this Agreement, the Owner will provide Offeror with prompt notice of this request so that it may seek an appropriate protective order or other appropriate remedy.

ARTICLE 13 – DELIVERY OF BIDS

13.01 Complete and deliver the Bid Form along with all required documents identified in the Bid Form.

13.02 Submit the Bid no later than the date and time prescribed and at the place indicated in Section 00 11 16 "Invitation to Bid." Enclose the Bid in an opaque sealed envelope plainly marked with the Project name and the name and address of the Offeror, along with the Bid Security and other required documents. Enclosed the sealed envelope containing the Bid in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED" if the Bid is sent by mail or other delivery system. Address the outer envelope to the mailing address shown in Section 00 11 16 "Invitation to Bid." Offeror assumes full responsibility for ensuring that the Bid arrives at the prescribed location before the prescribed time.

ARTICLE 14 – MODIFICATION OR WITHDRAWAL OF BIDS

14.01 Modify or withdraw a Bid using a document executed in the same manner that a Bid must be executed. Deliver the document to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

14.02 An Offeror may withdraw its Bid within 24 hours after Bids are opened if the Offeror files a signed written notice with the Owner and promptly thereafter demonstrates to the reasonable satisfaction of the Owner that there was a material and substantial mistake in the preparation of its Bid. The Bid Security will be returned if it is clearly demonstrated to the Owner that there was a material and substantial mistake in its Bid. An Offeror that requests to withdraw its Bid under these conditions may be disqualified from responding to a reissued Invitation to Bid for the Work to be furnished under these Contract Documents.

ARTICLE 15 – OPENING OF BIDS

15.01 Bids will be opened at the time and place indicated in Section 00 11 16 "Invitation to Bid." The Owner will publicly acknowledge receipt of Bids received in time to be considered and then open and read aloud the names of the Offerors and the amount bid as required by applicable Laws and Regulations.

ARTICLE 16 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

16.01 All Bids will remain subject to acceptance for the number of days specified in Section 00 11 16 "Invitation to Bid." The Owner may, at its sole discretion, release any Bid and return the Bid Security prior to the end of this period.

ARTICLE 17 – EVALUATION OF BIDS

17.01 The Owner will consider the proposed Contract Price and Contract Times and the qualifications of the Offerors to determine the lowest responsible Offeror.

17.02 Owner may conduct such investigations as it deems necessary to establish the responsibility, qualifications, and financial ability of consultants, individuals, or entities proposed to furnish parts of the Work in accordance with the Contract Documents.

17.03 Each Offeror agrees to waive any claim it has or may have against the members of the OPT and their respective employees, arising out of or in connection with the administration, evaluation, or recommendation of any Bid.

17.04 Notwithstanding any other provision of the Contract Documents, it is stipulated and agreed that by accepting a Bid, the Owner has not and does not waive its sovereign immunity from suit and/or liability.

ARTICLE 18 – AWARD OF CONTRACT

18.01 Owner reserves the right to reject any and all Bids, including non-conforming, non-responsive, or conditional Bids. The Owner may also reject the Bid of any Offeror if the Owner believes that it would not be in the best interest of the Owner to make an award to that Offeror. The Owner reserves the right to waive all formalities.

18.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered, except as additional Bids in accordance with Article 7. Reasonable grounds for believing that any Offeror has an interest in more than one Bid for the Work will be cause for disqualification of that Offeror and the rejection of all Bids in which that Offeror has an interest.

18.03 The Contract will be awarded to the lowest responsible Offeror if a contract is to be awarded.

18.04 Owner may consider the following in evaluating the Bids and awarding the Contract:

A. Offeror's qualifications and ability to demonstrate current capability to complete the Project in conformance with the requirements of the Contract Documents.

B. Compliance of the Bids with requirements of the Contract Documents.

C. Alternates and unit prices if requested in the bid forms.

D. The amount bid.

E. Proposed date of completion and the ability to meet intermediate Milestones that may have been established for the Project.

ARTICLE 19 – BONDS AND INSURANCE

19.01 The General Conditions set forth the Owner’s requirements as to bonds and insurance. When the Successful Offeror delivers the executed Agreement to the Owner, it must be accompanied by the performance and payment bonds and required evidence of insurance.

19.02 Provide performance and payment bonds for this Project that fully comply with the provisions of Tex. Gov’t Code Chapter 2253. Administration of these bonds will conform to Chapter 2253 and the provisions of the Contract Documents.

ARTICLE 20 – SIGNING OF THE AGREEMENT

20.01 The Notice of Award to the Successful Offeror will be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents that are identified in the Agreement. The Successful Offeror must sign and deliver the required number of counterparts of the Agreement and attached documents to the Owner within 15 days. The Owner will deliver two fully signed counterparts to the Successful Offeror within 10 days after receiving the signed documents from the Successful Offeror.

20.02 The Successful Offeror must also complete and submit a Certificate of Interested Parties (Form 1295) to the Owner as required by Tex. Gov't Code Chapter 2252 with the signed Agreement.

ARTICLE 21 – SALES AND USE TAXES

21.01 The Owner generally qualifies as a tax-exempt agency as defined by the statutes of the State of Texas and is usually not subject to any local or state sales or use taxes, however certain items such as rented equipment may be taxable even though Owner is a tax-exempt agency. Offerors assume responsibility for including any applicable sales taxes in their Bids and for complying with all applicable statutes and rulings of the State of Texas Comptroller.

ARTICLE 22 – WAGE RATES

22.01 This Contract is subject to Tex. Gov't Code Chapter 2258 concerning payment of prevailing wage rates. Requirements for paying the prevailing wage rates are discussed in Section 00 73 43 "Wage Rate Requirements." A schedule listing the minimum wage rates for various classifications of laborers which have been established by the Owner for this Project are included in Section 00 73 46 "Wage Determination Schedule." Offerors will be required to pay at least the minimum wages shown on this list and comply with all applicable federal, state, and local Laws and Regulations related to the payment of prevailing wage rates.

ARTICLE 23 – PROHIBITED CONTRACTS

23.01 Owner may not enter into contracts with companies that are engaged in business with Iran, Sudan, or a company known to have contracts with or provide suppliers or services to a foreign terrorist organization in accordance with Tex. Gov't Code Chapter 2252 or a company boycotting Israel in accordance with Tex. Gov't Code Chapter 2270.

ARTICLE 24 – FUNDING AGENCY PROVISIONS

24.01 This Project is funded in whole or in part by Texas Water Development Board (Funding Agency). The Funding Agency requires specific conditions and reporting as a condition for providing this funding. The conditions and reporting forms of the Funding Agency are included in the Contract Documents in Section 00 74 00 "Special Conditions for the Texas Water Development Board (TWDB-0550)".

24.02 Contingent Award of Contract

This contract is contingent upon release of funds from the Texas Water Development Board. Any contract(s) awarded under this Invitation for Bids is/are expected to be funded in part by a loan or loan with principal forgiveness from the Texas Water Development Board and a grant

from the United States Environmental Protection Agency, U.S. EPA. Neither the State of Texas, the U.S. EPA, nor any of its departments, agencies, or employees, are or will be a party to this Invitation for Bids or any resulting contract.

24.03 Disadvantaged Business Enterprise Goals

The Texas Water Development Board's (TWDB) Clean Water and Drinking Water State Revolving Fund programs receive federal funds from the U. S. Environmental Protection Agency (EPA). As a condition of federal grant awards, EPA regulations require that loan recipients make a "good faith effort" to award a fair share of work to Disadvantaged Business Enterprises (DBE) who are Minority Business Enterprises (MBE's), and Women-owned Business Enterprises (WBE's) whenever procuring construction, supplies, services and equipment. More information on DBE requirements is available in the Supplemental Contract Conditions section of this guidance No. 14. Disadvantaged Business Enterprises. The current fair share goals for the State of Texas are as follows:

Category	MBE	WBE
Construction	19.44%	9.17%
Equipment	16.28%	11.45%
Services	20.41%	13.66%
Supplies	25.34%	8.82%

24.04 Davis-Bacon Wage Rate Requirements

A. Davis-Bacon prevailing wage requirements apply to the construction, alteration or repair of treatment works carried out, in whole or in part, with assistance made available by the Clean Water State Revolving Fund (CWSRF) or a construction project financed, in whole or in part, from the Drinking Water State Revolving Fund (DWSRF).

B. The Davis-Bacon prevailing wage requirements apply to Contractors and Subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration or repair (including painting) of a treatment works project under the CWSRF or a construction project under the DWSRF.

C. For prime contracts in excess of $100,000, Contractors and Subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek.

The Fair Labor Standards Act may also apply to Davis-Bacon covered contracts.

D. Any contracts in excess of $2,000 must include the provisions of the Davis-Bacon Wage Rate Requirements. If the Owner (sub-recipient) is a governmental entity such as a city or district, it must insert in full the contract clauses found in TWDB Guidance DB-0156, Appendix 1: Section 3, Section 4 if the contract exceeds $100,000, and Section 5. If the Owner (sub-recipient) is a non-governmental entity such as a water supply corporation or a private company, it must insert in full the contract clauses found in TWDB Guidance DB-156, Appendix 2: Section 3, Section 4 if the contract exceeds $100,000, and Section 5.

The Owner (sub-recipient) must ensure all prime contracts require the same full text in any subcontracts. See TWDB Guidance DB-0156 for the text of the contract language that must be included. Additional information on Davis-Bacon Wage Rate Requirements and its applicability to this contract can be found in TWDB Guidance DB-0156.

24.05 American Iron and Steel

Any contract(s) awarded under this Invitation for Bids is/are subject to the American Iron and Steel (AIS) requirements of 33 U.S.C §1388 for Clean Water State Revolving Fund projects or Public Law 114-113, Consolidated Appropriations Act, 2016, or subsequent appropriations acts, for Drinking Water State Revolving Fund projects. The Contractor must complete the statement of understanding regarding this requirement, found in Supplemental Contract Conditions, Item No. 9.

24.06 Equal Employment Opportunity and Affirmative Action

All qualified applicants will receive consideration for employment without regard to race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age (40 or older), disability, or genetic information. Bidders on this work will be required to comply with the Department of Labor regulations at 41 CFR Part 60-4, relating to Construction Contractors--Affirmative Action Requirements, which include the President's Executive Order No. 11246, as amended by Executive Order No. 11375 and Executive Order No. 13672, in the award and administration of contracts awarded under TWDB financial assistance agreements. Failure by the Contractor to carry out these requirements is a material breach, which may result in the termination of the awarded financial assistance.

24.07 Debarment and Suspension Certification

This contract is subject to the federal requirements of Subpart C of 2 CFR Part 180 and Part 1532 regarding Debarment and Suspension. The Contractor will comply with the assurances provided with the bid that leads to a contract.

24.08 Bid Guarantee

Each bidder shall furnish a bid guarantee equivalent to five percent of the bid price (Water Code 17.183). If a bid bond is provided, the Contractor shall utilize a surety company which is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

24.09 Refer to Section 00 41 13 “Bid Form” for a list of documents required to be submitted with the bid.

24.10 The Funding Agency requirements govern in the event of any conflict between the Funding Agency requirements and any other provision of the Contract Documents.

END OF SECTION

00 41 13 BID FORM

ARTICLE 1 – BID RECIPIENT

1.01 Offeror submits this Bid to:

Laguna Madre Water District
105 Port Rd.
Port Isabel, TX 78578
Lift Station Nos. 1 and 37 Rehabilitation – LMWD Bid #LS-21-3-01

ARTICLE 2 – OFFEROR'S ACKNOWLEDGMENTS

2.01 Offeror proposes and agrees, if this Bid is accepted, to enter into an Agreement with the Owner on the form included in the Contract Documents and to perform all Work specified or indicated in Contract Documents for the Contract Price indicated in this Bid or as modified by Contract Amendment. Offeror agrees to complete the Work within the Contract Times established in the Agreement or as modified by Contract Amendment and comply with the all other terms and conditions of the Contract Documents.

2.02 Offeror accepts all of the terms and conditions of Section 00 11 16 "Invitation to Bid" and Section 00 21 13 "Instructions to Offerors."

2.03 Offeror accepts the provisions of the Agreement as to liquidated damages in the event of its failure to complete Work in accordance with the schedule set forth in the Agreement.

2.04 Offeror acknowledges receipt of the following Addenda:

Addendum No.	Addendum Date	Signature Acknowledging Receipt

ARTICLE 3 – OFFEROR'S REPRESENTATIONS

3.01 Offeror has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

3.02 Offeror has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3.03 Offeror is familiar with Laws and Regulations that may affect cost, progress, and performance of the Work.

3.04 Offeror has carefully studied the following Site-related reports and drawings as identified in the Supplementary Conditions:

A. Geotechnical Data Reports regarding subsurface conditions at or adjacent to the Site;

B. Drawings of physical conditions relating to existing surface or subsurface structures at the Site;

C. Underground Facilities referenced in reports and drawings;

D. Reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site; and

E. Technical Data related to each of these reports and drawings.

3.05 Offeror has considered the:

A. Information known to the Offeror;

B. Information commonly known to contractors doing business in the locality of the Site;

C. Information and observations obtained from visits to the Site; and

D. The Contract Documents.

3.06 Offeror has considered the items identified in Paragraphs 3.04 and 3.05 with respect to the effect of such information, observations, and documents on:

A. The cost, progress, and performance of the Work;

B. The means, methods, techniques, sequences, and procedures of construction to be employed by Offeror; and

C. Offeror's safety precautions and programs.

3.07 Offeror agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents based on the information and observations referred to in the preceding paragraphs.

3.08 Offeror is aware of the general nature of Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

3.09 Offeror has correlated the information known to the Offeror, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

3.10 Offeror has given the Construction Manager written notice of all conflicts, errors, ambiguities, or discrepancies that the Offeror has discovered in the Contract Documents, and the written resolution provided by the Construction Manager is acceptable to the Offeror.

3.11 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

3.12 Offeror's submittal of a Bid constitutes an incontrovertible representation that, without exception, all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 4 – BASIS OF OFFER

4.01 Offeror will complete the Work in accordance with the Contract Documents at the unit prices shown in the attached in Section 00 41 16 "Bid Form Exhibit A":

A. Extended amounts have been computed in accordance with the General Conditions.

B. Offeror acknowledges that the estimated quantities are not guaranteed, and final payment for all unit price items will be based on actual quantities provided, measured as provided in the Contract Documents.

C. Unit prices will be used to compute the actual Bid price.

ARTICLE 5 – TIME OF COMPLETION

5.01 Offeror agrees that the Work will be Substantially Complete and will be completed and ready for final payment in accordance with the General Conditions within the number of calendar days indicated in Section 00 52 13 “Agreement”.

ARTICLE 6 – ATTACHMENTS TO THIS BID

6.01 The following documents are attached to and made a condition of this Bid:

A. Section 00 41 16 “Bid Form Exhibit A.”

B. Section 00 43 13 “Bid Bond.”

C. Section 00 45 02 “Non-Collusion Certification.”

D. Section 00 45 03 “Conflict of Interest Questionnaire.”

E. Section 00 45 04 “State Sales Tax Requirements.”

F. Section 00 45 05 “Bidder’s Certifications (WRD-255).”

G. Section 00 45 06 “TWDB Affirmative Steps Solicitation Report (TWDB-0216).”

H. Section 00 45 07 “TWDB Prime Consultant/Contractor Certification (TWDB-0217)” with documentation of solicitation.

I. Section 00 45 08 “TWDB Participation Summary (TWDB-0373)”

J. Section 00 45 16 “Statement of Qualifications”

ARTICLE 7 – VENUE

7.01 Offeror agrees that venue will lie exclusively in Cameron County, Texas for any legal action.

00 42 16 BID FORM EXHIBIT 'A'

LIFT STATION REHABILITATION GENERAL BASE BID ITEMS					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Amount**
1.	For Mobilization and Demobilization described in the Contract Documents for the lump sum (Maximum 5% of total contract of the Lift Station Rehabilitation Project) of:	LS	1	$_____	$_____
2.	Project sign, complete as specified and indicated in the plans.	EA	1	$_____	$_____
3.	For development of a storm water pollution prevention plan including installation, maintenance and removal of temporary erosion and sedimentation control measures, complete as specified and indicated it the plans.	LS	1	$_____	$_____
4.	For development, design, and implementation of a trench safety system as required by the Occupational Safety and Health Administration and the assumption of responsibility for said system, including all required trench safety for alternate bid items, and structures complete as specified and indicated in the plans. (Contractor shall insert quantity of trench safety required for the project. Contractor will only be paid for trench safety installed.)	LF	_____ (min. 7,000)	$_____	$_____
5.	Provide and adhere to asbestos abatement plan, including proper disposal of any disturbed existing asbestos piping, including all appurtenant work, complete as specified and indicated on the plans.	LS	1	$_____	$_____
TOTAL BID AMOUNT (GENERAL BASE BID ITEMS)					$_____

LIFT STATION NO. 4 REHABILITATION BASE BID ITEMS					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Amount**
6.	For replacement of Lift Station No. 4, site rehabilitation, miscellaneous yard piping, hydro mulching, dewatering, testing, and all other appurtenant work and items not specifically included in other bid items, complete as specified and indicated in the plans.	LS	1	$_____	$_____
7.	Design, install, maintain, and remove Traffic Control Plan and devices, complete as specified and indicated in the plans.	LS	1	$_____	$_____
8.	Reroute existing 10” Lift Station No. 3 Force Main Discharge Piping, complete as specified and indicated in the plans.	LF	16	$_____	$_____
9.	Install asphalt pavement access drive, complete as specified and indicated in the plans.	SY	232	$_____	$_____
10.	Remove and replace existing 18” CMP culvert, complete as specified and indicated in the plans.	LS	1	$_____	$_____
11.	Abandon existing wet well and salvage existing submersible pumps, including demolition of existing concrete supports and discharge piping, complete as specified and indicated in the plans.	LS	1	$_____	$_____
12.	Rehabilitate existing concrete manhole, complete as specified and indicated in the plans.	EA	1	$_____	$_____
13.	Install 14’ diameter cast-in-place wet well and foundation including concrete protective coatings, complete as specified and indicated in the plans.	LS	1	$_____	$_____
14.	Install two (2) submersible pumps with bases, guide rails, and cables; complete as specified and indicated in the plans.	EA	2	$_____	$_____

15.	Install 15” diameter 3034 ASTM SDR 26 PVC gravity main, complete as specified and indicated in the plans.	LF	28	$_____	$_____
16.	Install proposed above grade discharge piping, valves and appurtenances complete as specified and indicated in the plans.	LS	1	$_____	$_____
17.	Install proposed wet well discharge piping, fittings and supports complete as specified and indicated in the plans.	LS	1	$_____	$_____
18.	Install tie-in for proposed discharge piping to existing force main, including all fittings, restraints, thrust blocking, and appurtenant work, complete as specified and indicated in the plans.	LS	1	$_____	$_____
19.	Install air release valve on proposed ductile iron discharge piping, complete as specified and indicated in the plans.	EA	1	$_____	$_____
20.	Install pressure gauge on proposed ductile iron discharge piping, complete as specified and indicated in the plans.	EA	3	$_____	$_____
21.	Install standby diesel pump skid and suction piping, complete as specified and indicated in the plans.	LS	1	$_____	$_____
22.	Install stainless steel pipe supports on above grade discharge piping, including all appurtenances, complete as specified and indicated in the plans.	EA	9	$_____	$_____
23.	Install 48”x108” triple leaf aluminum pump access hatch with safety grate, complete as specified and indicated in the plans.	EA	1	$_____	$_____
24.	Install stainless steel cable holders for pump cables and instrumentation, complete as specified and indicated in the plans.	EA	3	$_____	$_____
25.	Install 8” stainless steel vent and vent support, complete as specified and indicated in the plans.	EA	1	$_____	$_____

26.	Install odor control system, complete as specified and indicated in the plans.	EA	1	$_____	$_____
27.	Install protective coatings on all ductile iron piping and valves, above grade and within the wet well, complete as specified and indicated in the plans.	LS	1	$_____	$_____
28.	Provide by-pass pumping for the completion of the project, including all temporary and permanent connections, and all appurtenant work, complete as specified and indicated in the plans.	LS	1	$_____	$_____
29.	Remove and replace existing fence, complete as specified and indicated in the plans.	LF	250	$_____	$_____
30.	Install 4-foot man gate, complete as specified and indicated in the plans.	EA	1	$_____	$_____
31.	Install 12-foot cantilever gate, complete as specified and indicated in the plans.	EA	1	$_____	$_____
32.	Demolish existing electrical rack, conduits, lighting, instrumentation, etc., including all appurtenant work, complete as specified and indicated in the plans.	LS	1	$_____	$_____
33.	For the installation of all electrical equipment, foundations, lighting, conduit, instrumentation and wiring improvements, and all appurtenant work, complete as specified and indicated in the plans.	LS	1	$_____	$_____
TOTAL BID AMOUNT (LIFT STATION NO. 4 BASE BID ITEMS)					$_____

LIFT STATION NO. 11 FORCE MAIN BASE BID ITEMS					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Amount**
34.	Install 16" PVC DR 25 Force Main, including all stainless steel fittings, restraints, thrust blocking, and appurtenant work complete as specified and indicated in the plans.	LF	1,840	$_____	$_____
35.	Design, install, maintain, and remove Traffic Control Plan and devices, complete as specified and indicated in the plans.	LS	1	$_____	$_____
36.	Plug and abandon existing 12" PVC Force Main, complete as specified and indicated in the plans.	LF	1,840	$_____	$_____
37.	Install tie-in for proposed discharge piping to existing force main, including all fittings, restraints, thrust blocking, and appurtenant work, complete as specified and indicated in the plans.	EA	2	$_____	$_____
38.	Pavement Repair, complete as specified and indicated in the plans.	SY	820	$_____	$_____
39.	Concrete driveway repair, complete as specified and indicated in the plans.	SY	25	$_____	$_____
40.	Force Main Testing, complete as specified and indicated in the plans.	LF	1,840	$_____	$_____
41.	Right-of-Way Restoration, complete as specified and indicated in the plans.	LS	1	$_____	$_____
42.	Supplemental cost for use of cement stabilized backfill for trench backfill. If implemented, total for pipeline installation will be Item No. 34 + Item No. 42.	LF	1,840	$_____	$_____
TOTAL BID AMOUNT (LIFT STATION NO. 11 FORCE MAIN BASE BID ITEMS)					$_____

HICKMAN ROAD GRAVITY MAIN REPLACEMENT BASE BID ITEMS					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Amount**
43.	Install 18" PVC ASTM F679 PS115 Gravity Main, complete as specified and indicated in the plans.	LF	90	$_____	$_____
44.	Design, install, maintain, and remove Traffic Control Plan and devices, complete as specified and indicated in the plans.	LS	1	$_____	$_____
45.	Install 4' Fiberglass Manhole, complete as specified and indicated in the plans.	EA	2	$_____	$_____
46.	Rehabilitate existing manhole, complete as specified and indicated in the plans.	EA	1	$_____	$_____
47.	Pavement Repair, complete as specified and indicated in the plans.	SY	55	$_____	$_____
48.	Provide by-pass pumping for the completion of the project, including all temporary and permanent connections, and all appurtenant work, complete as specified and indicated in the plans.	LS	1	$_____	$_____
49.	Supplemental cost for use of cement stabilized backfill for trench backfill. If implemented, total for pipeline installation will be Item No. 43 + Item No. 49.	LF	90	$_____	$_____
TOTAL BID AMOUNT (HICKMAN ROAD GRAVITY MAIN BASE BID ITEMS)					$_____

LIFT STATION NO. 17 REHABILITATION BASE BID ITEMS					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Amount**
50.	For replacement of Lift Station No. 17, including foundation structural improvements, site rehabilitation, hydro mulching, dewatering, testing, and all other appurtenant work and items not specifically included in other bid items, complete as specified and indicated in the plans.	LS	1	$_____	$_____
51.	Abandon existing lift station, complete as specified and indicated in the plans.	LS	1	$_____	$_____
52.	Install water supply line, backflow preventer, and hose bib complete as specified and indicted in the plans.	LS	1	$_____	$_____
53.	Install 18” PVC ASTM 3034 SDR 26 Gravity Main, complete as specified and indicated in the plans.	LF	105	$_____	$_____
54.	Install 4’ Fiberglass Manhole, complete as specified and indicated in the plans.	EA	2	$_____	$_____
55.	Rehabilitate existing manhole, complete as specified and indicated in the plans.	EA	1	$_____	$_____
56.	Install 8’ Fiberglass Wet Well, complete as specified and indicated in the plans.	EA	1	$_____	$_____
57.	Install above grade non clog self-priming centrifugal pumps including pressure gauge, vacuum gauge, air release valve, and all appurtenant work, complete and specified and indicated in the plans.	LS	1	$_____	$_____
58.	Install wet well PVC suction piping and fittings, stainless steel supports, including all appurtenances, complete as specified and indicated in the plans.	LS	1	$_____	$_____

59.	Install above grade ductile iron discharge piping and fittings, check valves and gate valves, including all appurtenances, complete as specified and indicated in the plans.	LS	1	$_____	$_____
60.	Install air release valve on proposed ductile iron discharge piping, complete as specified and indicated in the plans.	EA	1	$_____	$_____
61.	Install aluminum access hatch and safety grating on existing wet well hatch, complete as specified and indicated in the plans.	LS	1	$_____	$_____
62.	Install stainless steel pipe supports on above grade discharge piping, including all appurtenances, complete as specified and indicated in the plans.	EA	5	$_____	$_____
63.	Install stainless steel cable holders for instrumentation, complete as specified and indicated in the plans.	EA	2	$_____	$_____
64.	Install 4” stainless steel vent and vent support, complete as specified and indicated in the plans.	LS	1	$_____	$_____
65.	Install protective coatings on all ductile iron piping and valves, above grade and within the wet well, complete as specified and indicated in the plans.	LS	1	$_____	$_____
66.	Provide by-pass pumping for the completion of the project, including all temporary and permanent connections, and all appurtenant work, complete as specified and indicated in the plans.	LS	1	$_____	$_____
67.	Install site fencing, complete as specified and indicated in the plans.	LF	80	$_____	$_____
68.	Install 4-foot man gate, complete as specified and indicated in the plans.	EA	1	$_____	$_____
69.	Install 8-foot cantilever gate, complete as specified and indicated in the plans.	EA	1	$_____	$_____

70.	Demolish existing electrical rack, conduits, lighting, instrumentation, etc., including all appurtenant work, complete as specified and indicated in the plans.	LS	1	$_____	$_____
71.	For the installation of all electrical equipment, foundations, lighting, conduit, instrumentation and wiring improvements, and all appurtenant work, complete as specified and indicated in the plans.	LS	1	$_____	$_____
TOTAL BID AMOUNT (LIFT STATION NO. 17 BASE BID ITEMS)					$_____

LIFT STATION NO. 17 FORCE MAIN REPLACEMENT BASE BID ITEMS					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Amount**
72.	Install 6” PVC DR 25 Force Main, including all stainless steel fittings, restraints, thrust blocking, and appurtenant work complete as specified and indicated in the plans.	LF	1,020	$_____	$_____
73.	Design, install, maintain, and remove Traffic Control Plan and devices, complete as specified and indicated in the plans.	LS	1	$_____	$_____
74.	Plug and abandon existing 6” asbestos concrete Force Main, complete as specified and indicated in the plans.	LF	1,020	$_____	$_____
75.	Install tie-in to existing downstream manhole, complete as specified and indicated in the plans.	EA	1	$_____	$_____
76.	Rehabilitate existing tie in manhole, complete as specified and indicated in the plans.	EA	1	$_____	$_____
77.	Pavement Repair, complete as specified and indicated in the plans.	SY	407	$_____	$_____

78.	Concrete Repair of existing drainage channel, complete as specified and indicated in the plans.	SY	346	$_____	$_____
79.	Force Main Testing, Complete as specified and indicated in the plans.	LS	1	$_____	$_____
80.	Right-of-Way Restoration, complete as specified and indicated in the plans.	LS	1	$_____	$_____
81.	Supplemental cost for use of cement stabilized backfill for trench backfill. If implemented, total for pipeline installation will be Item No. 72 + Item No. 81.	LF	1,020	$_____	$_____
TOTAL BID AMOUNT (LIFT STATION NO. 17 FORCE MAIN REPLACEMENT BASE BID ITEMS)					$_____

LIFT STATION NO. 25 FORCE MAIN REPLACEMENT BASE BID ITEMS					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Amount**
82.	Install 6” PVC DR 25 Force Main via Open Cut, including all stainless steel fittings, restraints, thrust blocking, and appurtenant work complete as specified and indicated in the plans.	LF	359	$_____	$_____
83.	Install 2” PVC Force Main via Open Cut, including all stainless steel fittings, restraints, thrust blocking, pavement repair, appurtenant work complete as specified and indicated in the plans.	LF	370	$_____	$_____
84.	Design, install, maintain, and remove Traffic Control Plan and devices, complete as specified and indicated in the plans.	LS	1	$_____	$_____
85.	Install 6” Fusible PVC DR 25 via Jack and Bore, complete as specified and indicated in the plans	LF	121	$_____	$_____

86.	Install 16" Steel Casing via Jack and bore, complete as specified and indicated in the plans.	LF	121	$_____	$_____
87.	Install bore pit for installation of 6" PVC force main across SH-100, complete as specified and indicated in the plans.	EA	2	$_____	$_____
88.	Plug and abandon existing 6" asbestos concrete Force Main, complete as specified and indicated in the plans.	LF	225	$_____	$_____
89.	Plug and abandon existing 2" PVC Force main, complete as specified and indicated in the plans.	LF	380	$_____	$_____
90.	Install 2" force main tie in to existing concrete manhole and rehabilitate existing concrete manhole, complete as specified and indicated in the plans.	EA	1	$_____	$_____
91.	Pavement Repair, complete as specified and indicated in the plans.	SY	20	$_____	$_____
92.	Concrete Driveway Repair, complete as specified and indicated in the plans	SY	100	$_____	$_____
93.	Force Main Testing, Complete as specified and indicated in the plans.	LS	1	$_____	$_____
94.	Right-of-Way Restoration, complete as specified and indicated in the plans.	LS	1	$_____	$_____
95.	Supplemental cost for use of cement stabilized backfill for trench backfill. If implemented, total for pipeline installation will be Item No. 82 + Item No. 83 + Item No. 95.	LF	729	$_____	$_____
TOTAL BID AMOUNT (LIFT STATION NO. 25 FORCE MAIN REPLACMENT BASE BID ITEMS)					$_____

LIFT STATION NO. 30 DECOMISSION AND GRAVITY MAIN BASE BID ITEMS					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Amount**
96.	Install 18" PVC F679 PS115 Gravity Main, complete as specified and indicated in the plans.	LF	1,100	$_____	$_____
97.	Install 6" PVC ASTM 3034 SDR 26 Gravity Main, complete as specified and indicated in the plans.	LF	154	$_____	$_____
98.	Decommission existing Lift Station No. 30 and reroute incoming laterals, complete as specified and indicated in the plans.	LS	1	$_____	$_____
99.	Rehabilitate existing concrete manhole, complete as specified and indicated in the plans.	EA	2	$_____	$_____
100.	Install 4' fiberglass manhole, complete as specified and indicated in the plans.	EA	1	$_____	$_____
101.	Install 6' fiberglass manhole, complete as specified and indicated in the plans.	EA	5	$_____	$_____
102.	Pavement Repair, complete as specified and indicated in the plans	SY	143	$_____	$_____
103.	Right-of-Way restoration, complete as specified and indicated in the plans.	LS	1	$_____	$_____
104.	Supplemental cost for use of cement stabilized backfill for trench backfill. If implemented, total for pipeline installation will be Item No. 96 + Item No. 104.	LF	1,254	$_____	$_____
TOTAL BID AMOUNT (LIFT STATION NO. 30 GRAVITY MAIN BASE BID ITEMS)					$_____

SH-100 GRAVITY MAIN BASE BID ITEMS					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Amount**
105.	Install 8" PVC ASTM 3034 SDR 26 Gravity Main, complete as specified and indicated in the plans.	LF	1080	$_____	$_____
106.	Design, install, maintain, and remove Traffic Control Plan and devices, complete as specified and indicated in the plans.	LS	1	$_____	$_____
107.	Install 8" Fusible PVC DR 25 via Jack and Bore, complete as specified and indicated in the plans	LF	245	$_____	$_____
108.	Install 16" Steel Casing via Jack and Bore, complete as specified and indicated in the plans.	LF	245	$_____	$_____
109.	Install bore pit for installation of 8" PVC force main across SH-100, complete as specified and indicated in the plans.	EA	2	$_____	$_____
110.	Install bore pit for driveway crossings, complete as specified and indicated in the plans.	EA	6	$_____	$_____
111.	Install 6" gravity service stub out, complete as specified and indicated in the plans.	EA	6	$_____	$_____
112.	Reroute and connect existing 4" force main service to proposed gravity main, complete as specified and indicated in the plans.	LF	230	$_____	$_____
113.	Rehabilitate existing concrete manhole, complete as specified and indicated in the plans.	EA	1	$_____	$_____
114.	Install 4' fiberglass manhole, complete as specified and indicated in the plans.	EA	8	$_____	$_____
115.	Pavement Repair, complete as specified and indicated in the plans	SY	360	$_____	$_____
116.	Repair concrete driveway, complete as specified and indicated in the plans	SY	140	$_____	$_____

117.	Right-of-Way restoration, complete as specified and indicated in the plans.	LS	1	$_____	$_____
118.	Supplemental cost for use of cement stabilized backfill for trench backfill. If implemented, total for pipeline installation will be Item No. 105 + Item No. 112+118.	LF	1310	$_____	$_____
				TOTAL BID AMOUNT (SH-100 GRAVITY MAIN BASE BID ITEMS)	$_____

TOTAL BID AMOUNT (ALL BASE BID ITEMS)	$_____

ALTERNATE BID ITEMS					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Amount**
A1.	Add: Furnish and install package Lift Station for Lift Station No. 35 as indicated in the plans and as specified.	LS	1	$_____	$_____
A2.	Add: Rehabilitate Lift Station No. 15 as indicated in the plans and as specified.	LS	1	$_____	$_____

Contract Time

L	Offeror agrees to reach Substantial Completion in	330	days
M	Offeror agrees to reach Final Completion in	360	days

BID SUBMITTED BY:

Offeror: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

00 43 13 BID BOND

Offeror as Principal Name: Mailing address (principal place of business):	**Surety** Name: Mailing address (principal place of business):
Owner Name: Laguna Madre Water District Mailing address (principal place of business): 105 Port Road Port Isabel, Texas 78578	Physical address (principal place of business): Telephone (Main): Telephone (Claims): Surety's state of incorporation:
Contract Project name and number: Lift Station Rehabilitation Project No. 1 Laguna Madre Water District Bid # LS-21-3-01 Bid/Proposal Due Date:	***By submitting this bond, Surety affirms it is authorized to do business and licensed to execute bonds in [specify state].*** **Local Agent for Surety** Name: Company: Mailing address (principal place of business):
Bond Contract Price Offered: Penal Sum of Bond: 5% of Contract Price offered Date of Bond:	Telephone (Main):

Surety and Offeror, intending to be legally bound by this bond, do each cause this bond to be duly executed on its behalf by its authorized officer, agent, or representative. The Offeror and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that if Owner accepts Offeror's Bid or Proposal and Offeror delivers the executed Agreement and the required bonds and evidence of insurance within the time stipulated in the Bidding or Proposal Documents this obligation is null and void. Payment under this bond will be due and payable upon default by Offeror and within 30 calendar days after receipt by Offeror and Surety of written notice of default from Owner. Venue lies exclusively in Cameron County, Texas for any legal action.

Offeror as Principal	**Surety**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Email: _____	Email: _____
	(Attach Power of Attorney)

END OF SECTION

00 45 02 NON-COLLUSION CERTIFICATION

STATE OF _____ §

COUNTY OF _____ §

Owner: Laguna Madre Water District
105 Port Rd.
Port Isabel, TX 78578

Contract: Lift Station Rehabilitation Project No.1
Laguna Madre Water District Bid # LS-21-3-01

Offeror certifies that it has not been a party to any collusion among Offerors in the restraint of freedom of competition by agreement to submit a Bid or Proposal at a fixed price or to refrain from submitting a Bid or Proposal; or with any official or employee of the Owner as to quantity, quality, or price in the prospective contract, or any other terms of said prospective contract; or in any discussion between Offerors and any official of the Owner concerning exchange of money or other thing of value for special consideration in the letting of a contract.

Certified this _____ day of _____ 20 _____ .

Offeror: _____
(typed or printed name of organization)

Signature: _____
(individual's signature)

Name: _____
(typed or printed)

Title: _____
(typed or printed

Business Address:

_____

_____

_____

Phone: _____ Email: _____

(Attach evidence of authority to sign if Offeror is a corporation, partnership, or a joint venture.)

END OF SECTION

CONFLICT OF INTEREST QUESTIONNAIRE — FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

_____
Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7

_____ _____
Signature of vendor doing business with the governmental entity Date

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

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

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

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

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

***

(2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

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

(1) the date that the vendor:

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

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

(2) the date the vendor becomes aware:

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

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

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

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015

END OF SECTION

00 45 04 STATE SALES TAX REQUIREMENTS

Comply with all applicable sales, excise, and use tax requirements of the Texas Tax Code. The Offeror hereby certifies that the Contract Price is divided as follows:

Tax exempt products, materials, and services (See Notes 1 and 2) $ _____

Taxable products, materials, and services (See Note 3) $ _____

Total (See Note 4) $ _____

Offeror: _____
(typed or printed name of organization)

Signature: _____
(individual's signature)

Name: _____
(typed or printed)

Title: _____
(typed or printed

Business Address:

_____

_____

_____

Phone: _____ Email: _____

(Attach evidence of authority to sign if Offeror is a corporation, partnership, or a joint venture.)

Notes:

1. Exempt products and materials are those items purchased for the Project which are physically incorporated into the facilities constructed for the Owner or are necessary and essential for the performance of the Work and are completely consumed at the Site. For purposes of this definition, products and materials are completely consumed if after being used once for its intended purpose it is used up or destroyed. Products and materials rented or leased for use in the performance of the Work cannot be completely consumed for the purposes of this definition.
2. Exempt services are those services performed at the Site where the Contract expressly requires the specific service to be provided or purchased by the person performing the Work or the service is integral to the performance of the Work.
3. Products, materials, and services are not tax exempt if they are used by the Contractor but are not physically incorporated into the Owner's facilities or are not consumed by construction as defined above. Machinery or equipment and its accessories and repair and replacement parts used in the performance of the Work are not exempt.
4. The total sum of the amount for tax exempt and taxable products, materials, and services must equal the Contract Price.

END OF SECTION

BIDDER'S CERTIFICATIONS

Project Name: _____

Project Number: _____

Contract For: _____

The following certifications must be completed by the bidder for each contract.

A. EQUAL EMPLOYMENT OPPORTUNITY:

☐ I have developed and have on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-1.7.

I have:

( ) participated in previous contract(s) or subcontract(s) subject to the equal opportunity clause under Executive Orders 11246 and 11375. I have filed all notices, contract specifications, and compliance reports due under the requirements contained in 41 CFR Part 60-4.

( ) **not** participated in previous contracts(s) subject to the equal opportunity clause under Executive Orders 11246 and 11375 and 41 CFR Chapter 60.

B. NONSEGREGATED FACILITIES

☐ I certify that I do not and will not maintain any facilities provided for my employees in a segregated manner, or permit my employees to perform their services at any location under my control where segregated facilities are maintained; and that I will obtain a similar certification prior to the award of any federally assisted subcontract exceeding $10,000 which is not exempt from the equal opportunity clause as required by 41 CFR Part 60-1.8.

I will obtain a similar certification from any proposed subcontractor(s), when appropriate.

I understand that a false statement on this certification may be grounds for rejection of this bid proposal or termination of the contract award.

_____

Typed Name and Title of Bidder's Authorized Representative

_____

Signature of Bidder's Authorized Representative Date

_____

Name and Address of Bidder

FOR OFFICE USE ONLY
Commitment #_____

TWDB-0216
Revised 11/13/2017

TWDB-0216
TEXAS WATER DEVELOPMENT BOARD
AFFIRMATIVE STEPS SOLICITATION REPORT

I. PROJECT INFORMATION

TWDB Project Number	Applicant/Entity Name	Total TWDB Funding Request	Program Type (insert "X" for all that apply)
			☐ Drinking Water SRF (DWSRF)
			☐ Clean Water SRF (CWSRF)

Project Name: _____

Solicitation By: ☐ Applicant/Entity OR ☐ Prime Contracted Business: _____

Project Phase: ☐ Prior to Closing ☐ Release of funding for PADs ☐ Construction Contract #_____

II. SOLICITATION METHOD(S) UTILIZED

At least two methods of solicitation are required. Select the method(s) utilized for the solicitation. Copies of the actual postings, direct contact email/phone log, etc. must be attached to this form as support documentation for each method used. Failure to adequately follow these steps will result in the requirement to complete additional steps in order to become compliant.

☐ Newspaper Advertisements ☐ Meetings or Conferences ☐ Trade Association Publications

☐ Minority Media ☐ Internet & Web Postings ☐ Other Government Publications

☐ Direct Contact by Phone, Fax, USPS Mail, or Email*

If using direct contact, entities must solicit to a **minimum of 3 businesses/firms (at least one being a DBE) for each category of contract sought (i.e., construction, supplies, equipment, or services) to demonstrate a Good Faith Effort.*

III. PROJECT BIDDERS LIST:

List on the following table, or provide on a separate list, each business entity directly solicited for procurement or that submitted a bid for consideration.

Instructions for Columns 1 - 4	1 - Full business name (line one) & point of contact (line two) 2 - Business address 3 - Telephone number 4 - Email address for the business
Instructions for Column 5	Enter one of the following procurement or contract categories: **CONSTRUCTION – SUPPLIES – EQUIPMENT – SERVICES** *For detailed definitions, review guidance document, TWDB-0210.*
Instructions for Column 6	Enter the type of business: **MBE** - Minority Business Enterprise, **WBE** - Women-owned Business Enterprise, or **OTHER** - Company or firm is Non-MBE or WBE

Notice: Entities receiving State Revolving Fund financial assistance must create and maintain a Bidders List if the entity is subject to, or chooses to follow, competitive bidding. The Bidders List must include all firms that bid or quoted on contracts under EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs. Entities must keep all Bidders Lists until project completion or the recipient is no longer receiving EPA funding under the loan, whichever is later. Entities with loans totaling less than $250,000 during a state fiscal year are exempt from the Bidders List requirement, but must still meet DBE program requirements. The Bidders List requirement also applies to all Prime Contracted Businesses/Firms that make subcontracting.

	Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**
	Business Name & Point of Contact	Business Address	Telephone Number	E-Mail Address	Procurement Category	MBE/WBE Status
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						

Use additional sheets if necessary

Signature – Authorized Representative	**Title (print legibly)**	**Date**

IV. TWDB APPROVAL SIGNATURE

Signature indicates the form meets DBE requirements.

DBE Coordinator	**Approval Date**

FOR OFFICE USE ONLY: Commitment #

TWDB-0217
Revised 08/14/2018

TWDB-0217
TEXAS WATER DEVELOPMENT BOARD (TWDB)
PRIME CONSULTANT/CONTRACTOR CERTIFICATION

I. PROJECT INFORMATION

TWDB Project Number	Applicant/Entity Name	Total of TWDB Funding	Program Type (insert "X" for all that apply)
			☐ Drinking Water SRF (DWSRF) ☐ Clean Water SRF (CWSRF)

Prime Consultant/Contractor: _____

Contract Number: _____ **Contract Amount:** _____

II. GOOD FAITH EFFORT (Applicable to all subcontracts awarded by the prime contractor/consultant)

I understand that it is my responsibility to comply with all state and federal regulations and guidance in the utilization of Minority and Women-owned Businesses in procurement. I certify that I will make a "good faith effort" to afford opportunities for Minority Business Enterprise (MBE), and Women-owned Business Enterprise (WBE) by:

1.	Including qualified MBEs and WBEs on procurement solicitation lists
2.	Soliciting potential MBEs and WBEs
3.	Reducing contract size/quantities when economically feasible to permit maximum participation by MBEs and WBEs
4.	Establishing delivery schedules to encourage participation by MBEs and WBEs
5.	Using the services and assistance of the Small Business Administration, Minority Business Development Agency, U.S. Department of Commerce, and Texas Marketplace
6.	Submitting documentation to the Applicant/Entity to verify good faith effort, steps 1-5.
☐	**EXCEPTION**: As the Prime Consultant/Contractor, I certify that I have reviewed the contract requirements and found no available subcontracting opportunities. I also certify that I will fulfill 100 percent of the contract requirements with my own employees and resources. (Check if applicable)

Signature – Prime Consultant/Contractor	Title (print legibly)	Certification Date

III. PROJECT PARTICIPATION ESTIMATES

The Cost Categories mentioned below are goals. These goals are neither standards nor quotas. Recipients of financial assistance are not required to meet the fair share objectives. They must, however, acknowledge that they are aware of and are actively pursuing the fair share objectives with their procurements.

	Potential **MBE** Participation	Potential **WBE** Participation
Cost Category	**Goal**	**Goal**
Construction	**19.44%**	**9.17%**
Supplies	**25.34%**	**8.82%**
Equipment	**16.28%**	**11.45%**
Services	**20.41%**	**13.66%**

The fair share goals listed above are required by 40 CFR Part 33 Subpart D and are directly negotiated with EPA Region 6. Entities receiving federal financial assistance are subject to the TWDB's goals and may not be substituted with other agency or program goals.

IV. TWDB APPROVAL SIGNATURE

Signature indicates the form meets DBE Requirements.

DBE Coordinator	Approval Date

FOR OFFICE USE ONLY
Commitment #_____

TWDB-0373
TEXAS WATER DEVELOPMENT BOARD
PARTICIPATION SUMMARY

I. PROJECT INFORMATION

TWDB Project Number	Applicant/Entity Name	Total TWDB Funding Request	Program Type (insert "X" for all that apply)
			☐ Drinking Water SRF (DWSRF) ☐ Clean Water SRF (CWSRF)

Project Name: _____

Solicitation By: ☐ Applicant/Entity OR ☐ Prime Contracted Business: _____

Project Phase: ☐ Prior to Closing ☐ Release of funding for PADs ☐ Construction Contract # _____

Instructions	
Column 1	Enter the full name, street address, city/state/zip for each firm awarded a contract for the project.
Column 2	Enter one of the following procurement or contract categories: **CONSTRUCTION – SUPPLIES – EQUIPMENT – SERVICES**
Column 3	Enter the type of business: **MBE (Minority Business Enterprise), WBE (Women-owned Business Enterprise), or OTHER (NOTE: OTHER = Company or firm is Non-MBE or WBE)**
Column 4	Enter the exact amount of the awarded contract.
Column 5	Enter the exact date the contract was executed or the proposed date of contract execution.

If valid MBE/WBE firms are awarded contracts, a copy of their certification is required to be attached with this form for each MBE/WBE business listed.

Notice: Brokers may not be listed below as an MBE or WBE. A broker is a firm that does not perform, manage, or supervise the work of its sub/contract in a manner consistent with the normal business practices for sub/contractors in its line of business. For more specifics, review guidance document, TWDB-0210.

II. LIST OF ACTUAL CONTRACTS/PROCUREMENTS

	Column 1 Name & Address of Contracted Firm/Vendor	Column 2 Procurement Category	Column 3 MBE/WBE Status	Column 4 Contract Amount ($)	Column 5 Contract Execution Date
1.					
2.					
3.					
4.					
5.					
6.					

(Table continues on the next page)

	Column 1 Name & Address of Contracted Firm/Vendor	Column 2 Procurement Category	Column 3 MBE/WBE Status	Column 4 Contract Amount ($)	Column 5 Contract Execution Date
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					

Use additional sheets if necessary

Signature – Authorized Representative	Title (print legibly)	Date

III. TWDB APPROVAL SIGNATURE

Signature indicates the form meets DBE requirements.

DBE Coordinator	Approval Date

CONTRACTOR'S ACT OF ASSURANCE

STATE OF TEXAS §
§
COUNTY OF_____§

BEFORE ME _____, a Notary Public duly commissioned and qualified in and for the County of _____ in the State of Texas came and appeared _____, as represented by _____, the Corporation's _____, who declares he/she is authorized to represent _____ pursuant to provisions of a resolution adopted by said Corporation on the _____ day of _____, 20_____(a duly certified copy of such resolution is attached to and is hereby made a part of this document).

_____, as the representative of, _____declares that _____ assures the Texas Water Development Board that it will construct _____ project at _____, Texas, in accordance with sound construction practice, all laws of the State of Texas, and the rules of the Texas Water Development Board.

GIVEN UNDER MY HAND and seal of office this _____ day of _____, 20_____.

_____ (Notary Public in and for the State of Texas)

_____ (Print Name)

[SEAL]

CONTRACTOR'S ACT OF ASSURANCE RESOLUTION

I hereby certify that it was RESOLVED by a quorum of the directors of the _____(Name of Corporation), meeting on the_____day of _____ 20_____, that:

Authorized Representative(s):

be, and hereby is/are authorized to act on behalf of _____ (Name of Corporation), as its representative in all business transactions conducted in the State of Texas, and;

That all above resolution was unanimously ratified by the Board of Directors at said meeting and that the resolution has not been rescinded or amended and is now in full forces and effect; and;

In authentication of the adoption of this resolution, I subscribe my name and affix the seal of the Corporation this _____ day of _____, 20_____.

_____(Secretary)

[SEAL]

00 45 13 QUALIFICATIONS STATEMENT

ARTICLE 1 – REQUIREMENTS FOR THE QUALIFICATIONS STATEMENT

1.01 The Qualifications Statement must be submitted by the apparent low Offeror with the bid submittal. Failure to submit the required information in the Qualifications Statement may result in the Owner considering the Bid non-responsive and may result in rejection of the Bid by the Owner. Offerors may be required to provide supplemental information if requested by the Owner to clarify, enhance, or supplement the information provided in the Qualifications Statement.

1.02 Offerors must provide the information requested in this Qualifications Statement using the forms attached to this Section. These forms are available in Microsoft Word or Excel upon request. The information requested in these forms must be provided completely and in detail. Information that cannot be totally incorporated in the forms may be included as an appendix to the form. This appendix must be clearly referenced by appendix number on the form, and the appended material must include the appendix number on every sheet of the appendix. The appendix must include only the information that responds to the question or item number to which the appended information applies.

1.03 Offerors may provide supplemental information to the Qualifications Statement such as organizational brochures or other marketing information to help demonstrate their qualifications to the Owner. This information may not be submitted as a substitute for the information specifically requested in this Section. The reference must include the specific paragraph or section that applies to that question or item if this information is included as an appendix to the information requested in Article 2.

ARTICLE 2 – INSTRUCTIONS FOR PREPARING THE QUALIFICATIONS STATEMENT

2.01 Offeror’s Organization and General Information:

A. Provide general information about the Offeror's organization using copies of Table 1. Provide the same information for each joint venture partner if the Offeror is a joint venture.

B. Provide information regarding the operational structure of the Offeror’s organization, including a list of officers, the limits of authority for these individuals with regards to the proposed Project, documentation of authority to execute documents, and a copy of organizations’ certificate of authorization to conduct business in the state the Project is located in. If the Project is located in a state that licenses contractors, Offeror must also provide documentation showing that the organization is licensed as a general contractor in that state, including any applicable classifications and limitations.

C. Financial Management:

1. Provide Offeror’s most recent audited financial statement and the most recent financial statement if the most recent audited financial statement is more than 2 years old.

2. Provide the Offeror's financial summary information in Table 1, including the financial indicators from the Offeror's most recent financial statement using the formulas below:

   Current Ratio: Current Assets ÷ Current Liabilities

   Quick Ratio: (Cash and Cash Equivalents + Accounts Receivable + Short Term Investments) ÷ Current Liabilities

3. Describe the resources that are available to the Offeror to provide adequate cash flow for the Project if Offeror's Current Ratio or Quick Ratio are less than 1.0.

D. Safety:

1. Provide a narrative not to exceed four pages describing the Offeror's success in implementing an effective project site safety program. Provide a narrative describing the Offeror's safety program and a statement regarding the organization's commitment to safety. Offerors should not provide copies of safety manuals or programs.

2. Provide Experience Modification Ratio (EMR) and Total Recordable Frequency Rate (TRFR) history for the last 3 years for the Offeror and any proposed Subcontractors that will provide Work valued at 25 percent or more of the Contract Price. Provide this information in Table 1.

   a. The Offeror's EMR is a computation by the insurance industry that compares a company's annual losses in workers' compensation insurance claims against its policy premiums over a three-year period, excluding the current year.

   b. The Offeror's TRFR is a calculation of a firm's total number of OSHA-recordable injuries and illnesses over a given period (usually a year), divided by the total number of personnel-hours worked.

E. Claims Experience and Litigation History: Provide a list of all claims or litigation involving owners on other construction projects that have been active over the last 5 years or that are currently unresolved. Include this information in Table 1. Provide a narrative describing the issues being contested and when it is anticipated that the disputes will be resolved. Claims are to include only those items which have progressed through the change management process for the project and are being disputed by the Offeror or the project owner.

F. Past Experience with the Owner: Provide a list of projects that have been completed with the Owner over the last 5 years. Include this information in Table 1. Provide a narrative not to exceed two pages describing how this experience will impact the performance of the Offeror on this Project.

2.02 Project Experience:

A. Provide a list of projects completed by the Offeror in the last 5 years using copies of Table 2.

B. Provide detailed descriptions of projects which demonstrate the experience of the Offeror's team with construction of similar projects. Experience must include, as a minimum, the satisfactory completion of at least five similar projects within the last 5 years. Offerors not

meeting the requirement for similar projects may be disqualified as being non-responsive. Similar projects must include:

1. Lift Station Rehabilitation and utility installation like the size and scale of the work within this project.

C. Provide a narrative not to exceed two pages for each project describing up to five specific projects that qualify as similar projects. Projects selected must demonstrate the capabilities of the Offeror.

2.03 Experience and Qualifications of Proposed Key Personnel:

A. Provide a narrative not to exceed four pages describing the Offeror's project management structure and the qualifications of the project management team for this Project. Include an organization chart showing the relationship between Offeror and key Subcontractors and Suppliers.

B. Provide information on the key personnel proposed for this Project on Tables 3 through 7. Key personnel include the project manager, project superintendent, safety manager, and quality control manager. The Offeror may provide information on an alternate individual if the Offeror is not able to commit to one individual for the Project at the time the Bid is submitted. Qualifications of these individuals will be considered in evaluating the qualifications of the Offeror. The Offeror must commit to providing the services of the proposed key personnel or alternate for the life of the Project as a condition of qualification. Failure to provide the proposed key personnel may result in the disqualification of the Offeror and will provide the basis for termination of the Contract at the discretion of the Owner.

C. Include a list of the current project assignments for each of the individuals proposed, the anticipated completion date for this assignment, and the percentage of the time they will have available to devote to this Project. The Project Superintendent must be dedicated to this Project full time for the duration of the Project. If any other key personnel are not devoted solely to this Project, indicate how time is to be divided between this Project and their other assignments. Specifically address how and when individuals currently on other assignments will transition into this Project.

D. Provide resumes not exceeding two pages for each individual proposed for the key personnel positions and their alternates. Resumes must describe the qualifications of the individual and include the following as a minimum: technical experience, managerial experience, education and formal training, primary language, and a work history which describes project experience, including the roles and responsibilities for each assignment. Additional information highlighting the experience which makes them the best candidate for the assignment should also be included. Focus on projects on which individuals proposed have had significant involvement in the last 5 years and which demonstrate their experience with similar projects.

E. Identify individuals that will fill one or more of these key roles and describe their ability to handle multiple responsibilities. Provide a written narrative describing the percentage of the time that will be devoted to each role and the qualifications to fulfill each role if an individual is to fulfill more than one of the key personnel roles.

F. Provide a tabulation of the projects on which the key personnel have been personally involved using copies of Table 7. This tabulation is to include the name and a current telephone number for references for each of these project assignments.

G. Provide a narrative not to exceed two pages for each project the proposed individuals have worked on that qualify as similar projects. Specifically identify the role and responsibilities of the individual on these similar projects. Projects selected must demonstrate the capabilities of the proposed key personnel.

H. Provide a narrative not to exceed ten pages to describe the overall performance of the individuals on these projects. This narrative may include references to letters of recommendation, project awards, and other references to demonstrate experience in constructing a project which meets the owner's expectations for a quality project constructed on time and within budget.

2.04 Offeror's Ability to Complete Projects within the Contract Price and Contract Times:

A. Provide a tabulation of budget performance on projects completed by the Offeror within the last 5 years using copies of Table 8 to demonstrate the ability of the Offeror to complete projects for the Contract Price. Notes may be added to each line item to describe circumstances for change orders beyond the control of the Offeror.

B. Provide a tabulation of all projects completed by the Offeror within the last 5 years on Table 9 to demonstrate performance in completing projects on time. Notes may be added to the tabulations to indicate the reasons for not meeting original contract completion dates.

ARTICLE 3 – BID REQUIREMENTS

3.01 Provide the Qualifications Statement using the referenced tables and narrative descriptions as described in this Section. Pages are to be 8-1/2 x 11 pages using a minimum font size of 10. Provide a tab to separate materials responding to each of the rating categories listed in Article 2.

3.02 Additional information may be included in appendices attached to the Bid. Each appendix must reference the section of the criteria it is in reference to.

3.03 Provide one printed copy of the Bid at the time and place set forth in Section 00 11 16 "Invitation to Bid." Provide a digital copy of the Bid in Portable Document Format (pdf) on a CD. This digital copy is to include all information required to evaluate the Bid.

ARTICLE 4 – FORMS

4.01 The following tables are attached to this Section:

Table	Description
1	General Information
2	Current Projects and Project Completed within the last 5 Years
3	Proposed Project Managers
4	Proposed Project Superintendents
5	Proposed Project Safety Managers
6	Proposed Project Quality Control Managers
7	Project Information for Key Personnel

Table	Description
8	Demonstration of Budget Performance
9	Demonstration of On-Time Performance

ARTICLE 5 – CERTIFICATION

5.01 By submitting this Qualifications Statement and related information, Offeror certifies that it has read this Qualifications Statement and that Offeror's responses are true and correct and contain no material misrepresentations, and that the individual signing below is authorized to make this certification on behalf of the Offeror's organization.

Offeror: _____
(typed or printed name of organization)

Signature: _____
(individual's signature)

Name: _____
(typed or printed)

Title: _____
(typed or printed

Attest: _____
(individual's signature)

Designated Representative:

Name: _____

Title: _____

Address for giving notices:

_____

_____

_____

Phone: _____ Email: _____

(Attach evidence of authority to sign if Offeror is a corporation, partnership, or a joint venture.)

Table 1 - General Information

Organization			
Legal Name of Business			
Form of Business Entity: ☐ Joint Venture ☐ Corporation ☐ General Partnership ☐ Limited Partnership			
Date Business was formed		State under which Business was formed	
Is this Business authorized to operate in the Project location: ☐ Yes ☐ No ☐ Pending			
Is this Business licensed as a general contractor in the Project location: ☐ Yes ☐ No ☐ Pending ☐ N/A			
List of companies, firms, or organizations that own any part of this Business.			
Name of company, firm, or organization.			Percent ownership
Principal Office			
Primary contact		Main telephone number	
Email address		Website address	
Business address of principal office			
Regional Office			
Primary contact		Main telephone number	
Email address		Website address	
Business address of regional office			

Business History		
List of names that this Business currently has or anticipates operating under over the history of the Business, including the names of related companies presently doing business.		
Names of organization	From date	To date

Indicators of Organization Size	
Average number of current full-time employees	
Average estimate of revenue for the current year	

Table 1 - General Information Cont'd

Previous Contracting Experience			
Years of experience in projects similar to the proposed Project:			
As a general contractor		As a joint venture partner	
Has this organization or a participating or predecessor organization ever been disqualified as a bidder by any local, state, or federal agency within the last 5 years? ☐ Yes* ☐ No			
Has this organization or a participating or predecessor organization ever been barred from contracting by any local, state, or federal agency within the last 5 years? ☐ Yes* ☐ No			
Has this organization or a participating or predecessor organization been released from a bid or proposal in the past 5 years? ☐ Yes* ☐ No			
Has this organization or a participating or predecessor organization ever defaulted on a project or failed to complete any contract awarded to it? ☐ Yes* ☐ No			
Has this organization or a participating or predecessor organization ever refused to construct or refused to provide materials defined in the contract documents or in a change order? ☐ Yes* ☐ No			
Is this organization or a participating or predecessor organization currently involved in any litigation or contemplating litigation? ☐ Yes* ☐ No			
Provide full details in a separate attachment for each statement above with a "yes" response above.			

Previous History with Owner		
List projects that have been completed with the Owner over the last 5 years. If more than 5 projects, list only the most recent.		
	Project Name	Year
1		
2		
3		
4		
5		

Previous Claims History and Litigation Experience		
List all claims or litigation involving owners on other construction projects that have been active over the last 5 years or that are currently unresolved.		
	Description of Claim or Litigation	Status
1		
2		
3		
4		
5		

Table 1 - General Information Cont'd

Surety			
Surety Name			
Mailing address (principal place of business):		Physical address (principal place of business):	
Telephone (main number)		Telephone (claims notices)	
Name of Local Agent for Surety			
Telephone		Email	
Surety is a corporation organized and existing under the laws of the state of			
Is surety authorized to provide surety bonds in the Project location? ☐ Yes ☐ No			
Is surety listed in the U.S. Department of the Treasury's Listing of Approved Sureties (Department Circular 570 "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies")? ☐ Yes ☐ No			
Insurance			
Name of Insurance Provider			
Provider is a corporation organized and existing under the laws of the state of			
Is Provider licensed or authorized to issue insurance policies in the Project location?		☐ Yes ☐ No	
Does Provider have an A.M. Best Rating of A-VIII or Better?		☐ Yes ☐ No	
Mailing Address (principal place of business)			
Physical Address (principal place of business)			
Telephone (main number)			
Telephone (for notice of claims)			
Local Agent for Provider			
Address for Local Agent			
Telephone for Local Agent			
Construction Site Safety Experience			
Provide Offeror's Experience Modification Ratio (EMR) and Total Recordable Frequency Rate (TRFR) for the last 3 years and the EMR and TRFR history for the last 3 years of any proposed Subcontractor that will provide Work valued at 25% or more of the Contract Price.			

Year	Offeror		Subcontractor		Subcontractor		Subcontractor	
	EMR	TRFR	EMR	TRFR	EMR	TRFR	EMR	TRFR
1								
2								
3								

Table 1 - General Information Cont'd

Financial Summary Information for Offeror	
Date of Offeror's most current financial statement	
Date of Offeror's most current audited financial statement	
Financial indicators from the most current financial statement:	
Offeror's Current Ratio = Current Assets ÷ Current Liabilities	
Offeror's Quick Ratio = (Cash and Cash Equivalents + Accounts Receivable + Short Term Investments) ÷ Current Liabilities	
Describe the resources that are available to the Offeror to provide adequate cash flow for the Project if Offeror's Current Ratio or Quick Ratio are less than 1.0:	

Disadvantaged Business Certifications			
Name of Certification		Certifying Agency	Certification Date
☐ Disadvantage Business Enterprise			
☐ Minority Business Enterprise			
☐ Woman Business Enterprise			
☐ Disabled Veteran Owned Business			
☐ Historically Underutilized Business			
☐ Small Business Enterprise			
☐ Other			
☐ None			

Table 2 - Current Projects and Project Completed within the last 5 Years

Name of Organization					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					

Table 3 - Proposed Project Managers

Name of Organization			
Primary Candidate			
Name of individual			
Years of experience as project manager			
Years of experience with this organization			
Number of similar projects as project manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	
Alternate Candidate			
Name of individual			
Years of experience as project manager			
Years of experience with this organization			
Number of similar projects as project manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	

Table 4 - Proposed Project Superintendents

Name of Organization			
Primary Candidate			
Name of individual			
Years of experience as project superintendent			
Years of experience with this organization			
Number of similar projects as project superintendent			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	
Alternate Candidate			
Name of individual			
Years of experience as project superintendent			
Years of experience with this organization			
Number of similar projects as project superintendent			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	

Table 5 - Proposed Project Safety Managers

Name of Organization			
Primary Candidate			
Name of individual			
Years of experience as project safety manager			
Years of experience with this organization			
Number of similar projects as project safety manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	
Alternate Candidate			
Name of individual			
Years of experience as project safety manager			
Years of experience with this organization			
Number of similar projects as project safety manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	

Table 6 - Proposed Project Quality Control Managers

Name of Organization			
Primary Candidate			
Name of individual			
Years of experience as quality control manager			
Years of experience with this organization			
Number of similar projects as quality control manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	
Alternate Candidate			
Name of individual			
Years of experience as quality control manager			
Years of experience with this organization			
Number of similar projects as quality control manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	

Table 7 - Project Information for Key Personnel

Name of Organization					
Provide information on all projects completed by the Organization within the last 5 years.					
Project Owner		Project Name			
General Description of Project					
Project Budget and Schedule Performance					
Budget History	Amount	% of Bid Amount	Schedule Performance	Date	Days
Original Contract Price			Notice to Proceed		
Change Orders			Contract Substantial Completion Date at Notice to Proceed		
Owner Enhancements			Contract Final Completion Date at Notice to Proceed		
Unforeseen Conditions			Change Order Authorized Substantial Completion Date		
Design Issues			Change Order Authorized Final Completion Date		
Total			Actual / Estimated Substantial Completion Date		
Final Cost			Actual / Estimated Final Completion Date		

Key Project Personnel				
	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager
Name				
Percentage of time devoted to the project				
Percentage of time proposed for this Project				
Did Individual start and complete the project?				
If not, who started or completed the project in their place?				
Reason for change?				

Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					
Surety					

Issues / disputes resolved or pending resolution by arbitration, litigation or dispute review boards							
Number of issues resolved		Total amount involved in resolved issues		Number of issues pending		Total amount involved in issues pending	

Table 8 - Demonstration of Budget Performance

Name of Offeror							
Provide information on all projects completed by the Offeror within the last 5 years.							
Owner Name	Project Description	Original Contract Price	Value of Change Orders			Total Change Orders	Percent of Changes to Original Contract Price
			Owner Enhancements	Unforeseen Conditions	Design Issues		
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							

Table 9 - Demonstration of On-Time Performance

Name of Organization							
Provide information on all projects completed by the Organization within the last 5 years.							
Owner Name	Project Description	Original Contract Date for Substantial Completion	Original Contract Date for Final Completion	Amended Contract Date for Substantial Completion	Amended Contract Date for Final Completion	Actual Contract Date for Substantial Completion	Actual Contract Date for Final Completion
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							

END OF SECTION

00 52 13 AGREEMENT

This Agreement is between Laguna Madre Water District (Owner) and **[name of Contractor to be inserted at time of Contract execution]** (Contractor).

Owner and Contractor agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is designated as follows:

Lift Station Rehabilitation Project No. 1
Laguna Madre Water District Bid # LS-21-3-01

ARTICLE 2 – DESIGN PROFESSIONAL

2.01 The Design Professional for this Project is:

Freese and Nichols, Inc.
1251 Sadler Driver
Building 1 Suite 1150
San Marcos, TX 78666

ARTICLE 3 – CONSTRUCTION MANAGER

3.01 The Construction Manager for this Project is:

Freese and Nichols, Inc.
1251 Sadler Driver
Building 1 Suite 1150
San Marcos, TX 78666

ARTICLE 4 – CONTRACT TIMES

4.01 Contract Times

A. The Work is required to be substantially complete within 330 calendar days after the date when the Contract Times commence to run as provided in the General Conditions and complete and ready for final payment in accordance with the General Conditions within 30 calendar days after the date of Substantial Completion.

4.02 Liquidated Damages

A. Owner and Contractor recognize that the Contract Times specified for Substantial Completion and Final Completion are of the essence in the Contract. Owner and Contractor recognize that the Owner will suffer financial loss if the Work is not completed within the Contract Times specified in this Agreement and in Section 01 35 00 “Special Procedures” as may be adjusted in accordance with the General Conditions. Owner and Contractor also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by Owner if the Work is not completed within the

Contract Times. Accordingly, instead of requiring proof of the amount of these damages, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Contractor agrees to pay Owner $500 for each day that expires after the time specified in this Agreement for Substantial Completion until the Work is substantially complete.
2. Contractor agrees to pay Owner $500 for each day that expires after the time specified in this Agreement for Final Completion until the Work is completed and ready for final payment in accordance with the General Conditions.

B. Liquidated damages for failing to timely attain Substantial Completion and Final Completion are not additive and will not be imposed concurrently.

C. Contractor agrees to pay the Owner liquidated damages as stipulated in Section 01 35 00 "Special Procedures" for failure to meet Contract Times for Milestones or Critical Operations.

D. OPT will determine whether the Work has been completed within the Contract Times. Assessment of liquidated damages by the Owner does not waive the Owner's right to assess or collect additional damages which the Owner may sustain by the failure of the Contractor to perform in accordance with the terms of the Contract.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner will pay Contractor for completion of the Work in accordance with the Contract Documents at the prices shown in this Agreement. The Contract Price has been computed in accordance with the General Conditions. Contractor acknowledges that for unit price items, estimated quantities are not guaranteed and are solely for the purpose of comparing Bids, and that final payment will be based on actual quantities determined in accordance with the Contract Documents.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by the Construction Manager per Section 01 29 00 "Application for Payment Procedures."

6.02 Owner will make progress payments on or about the 25th day of each month during performance of the Work. Payment is based on the total earned value of Work completed in the previous month in accordance with the Schedule of Values established as provided in the General Conditions.

6.03 Payment will be made for the total earned value of Work completed in the previous month after deducting:

A. Retainage calculated per this Agreement;

B. Set-offs determined in accordance with the General Conditions; and

C. The total amount of payments previously made.

6.04 Retainage

A. Progress payments will be made in an amount equal to 90 percent of the total earned value to date for completed Work and properly stored materials. The remaining 10 percent of the

total earned value to date will be held as retainage. Owner may authorize that remaining payments be made in an amount equal to 100 percent of the total earned value for Work and properly stored materials completed after 50 percent of the Work has been completed, provided the Owner finds that the Work completed to date is satisfactory and that progress to date indicates that the Project will be completed within the Contract Times. This retainage amount may be adjusted for changes in the Contract Price that occur after 50 percent of the Contract Price has been paid to the Contractor. The reduction in the amount of retainage held after 50 percent of the Work has been completed requires approval of the Owner's governing body.

B. Owner may reduce the amount of retainage held after Substantial Completion if the Owner determines that the amount of retainage being held is in excess of that needed to protect the interest of the Owner. Owner may pay Contractor 100 percent of the earned value of the Work completed, less amounts withheld in accordance with the General Conditions and less 200 percent of Construction Manager's estimate of the value of Work to be completed or corrected to reach Final Completion. The reduction in the amount of retainage held per this paragraph requires approval of the Owner's governing body.

C. Owner is not obligated to pay interest on the 10 percent retainage held on the first 50 percent of the earned value of Work completed. Any retainage held by the Owner on the remaining 50 percent of the earned value of Work completed will be deposited in an interest-bearing account until that amount is paid to the Contractor. Interest earned by that account will be paid to the Contractor in accordance with Tex. Water Code Chapter 49. The interest rate to be paid on this account will be the same rate of interest paid by the Owner's depository bank on interest-bearing accounts of similar amounts during the period of time interest accrues.

6.05 Release or reduction in retainage is contingent upon the consent of surety to the reduction in retainage. Submit a Consent of Surety Company to Reduction of or Partial Release of Retainage form as provided by or approved by the Construction Manager.

6.06 Owner will pay the remainder of the Contract Price as recommended by Construction Manager in accordance with the General Conditions upon Final Completion and acceptance of the Work.

ARTICLE 7 – PAYMENT OF INTEREST

7.01 All moneys not paid when due as provided in the General Conditions will earn interest at the rate specified in Tex. Gov't Code Chapter 2251. Interest accrual will cease upon payment by the Owner.

7.02 No interest payments will be paid to the Contractor for invoices not paid when due as provided in the General Conditions.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 The Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied the following Site related reports and drawings as identified in the Supplementary Conditions:

1. Geotechnical Data Reports regarding subsurface conditions at or adjacent to the Site;
2. Drawings of physical conditions relating to existing surface or subsurface structures at the Site;
3. Underground Facilities referenced in reports and drawings;
4. Reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site; and
5. Technical Data related to each of these reports and drawings.

E. Contractor has considered the:

1. Information known to Contractor;
2. Information commonly known to contractors doing business in the locality of the Site;
3. Information and observations obtained from visits to the Site; and
4. The Contract Documents.

F. Contractor has considered the items identified in Paragraphs 8.01.D and 8.01.E with respect to the effect of such information, observations, and documents on:

1. The cost, progress, and performance of the Work;
2. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
3. Contractor's safety precautions and programs.

G. Based on the information and observations referred to in the preceding paragraphs, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

H. Contractor is aware of the general nature of Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

I. Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

J. Contractor has given the Construction Manager written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution provided by the Construction Manager is acceptable to the Contractor.

K. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

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

ARTICLE 9 – ACCOUNTING RECORDS

9.01 Accounting Record Availability: Contractor is to establish and maintain, in accordance with generally accepted accounting practices, full and detailed accounting records of materials incorporated into the Project, and labor, tools, materials, and equipment used for the Work, consistent with the requirements of the General Conditions and as necessary for proper financial management under this Agreement. Subject to prior written notice, provide Owner reasonable access during normal business hours to Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and the Contractor's fee. Preserve all such documents for a period of 3 years after the final payment by the Owner.

ARTICLE 10 – OTHER REQUIREMENTS

10.01 Ineligibility to Receive State Grants or Loans or Receive Payment on State Contracts: As required by Tex. Fam. Code Section 231.006, Contractor certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

10.02 Workers' Compensation Insurance

A. By signing this Agreement, Contractor certifies that it provides workers' compensation insurance coverage for all employees employed on this Project pursuant to Tex. Lab. Code Section 406.096(a).

B. As required by Section 406.096(b), Contractor must require each Subcontractor to certify in writing to the Contractor that the Subcontractor provides workers' compensation insurance coverage for all of the employees it employs on this Project. Contractor must provide these certifications to the Owner within 10 days of the Effective Date of the Agreement.

10.03 Contracts Prohibited by Tex. Gov't Code Chapter 2155

A. Section 2155.004:

1. Section 2155.004 states that "a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based."

2. Under Section 2155.004, Government Code, Contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

B. Section 2155.006:

1. Section 2155.006 states that "a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that

includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

2. Under Section 2155.006, Government Code, Contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

10.04 Prohibition on Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations

A. Tex. Gov't Code Chapter 2252, Subchapter F, prohibits the award of governmental contracts to companies engaged in business with Iran, Sudan, or foreign terrorist organizations.

B. By signing this Agreement, Contractor certifies that it is not ineligible to be awarded this Contract under Chapter 2252, Subchapter F.

10.05 Prohibition on Contracts with Certain Companies that Boycott Israel

A. Tex. Gov't Code Chapter 2270 prohibits the award of governmental contracts to companies boycotting Israel.

B. By signing this Agreement, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

10.06 Certificate of Interested Parties: Contractor must complete and submit a Certificate of Interested Parties (Form 1295) to the Owner with the signed Agreement as required by Tex. Gov't Code Section 2252.908.

ARTICLE 11 – VENUE

11.01 Contractor agrees that venue lies exclusively in Cameron County, Texas for any legal action.

ARTICLE 12 – CONTRACT DOCUMENTS

12.01 Contract Documents

A. Specifications Sections listed in Section 00 01 10 "Table of Contents" except as specifically excluded in Paragraph 12.02.

B. Drawings listed in the Sheet Index on the Drawings.

C. Addenda (Numbers 00 91 01 to 00 91 **[XX]**, inclusive).

D. The following Funding Agency documents are Contract Documents:

Specification Section	Title	Funding Agency Document No.
00 74 01	Special Conditions for the Texas Water Development Board	(TWDB-0550)
00 74 02	Guidance on Davis-Bacon Wage Rate Requirements for State Revolving Fund Projects	(TWDB DB-0156)
00 74 03	American Iron and Steel (AIS) Guidance for Clean Water & Drinking Water State Revolving Fund Projects	(TWDB-1106)
00 74 04	Disadvantaged Business Enterprises for State Revolving Fund Projects	(TWDB-0210)
00 74 07	Site Certificate	(ED-101)

E. The following are also Contract Documents which may be delivered or issued on or after the Effective Date of the Contract:

1. Notice to Proceed.
2. Contract Amendment(s).
3. Change Order(s).
4. Field Order(s).
5. Work Change Directive(s).

F. There are no Contract Documents other than those listed above in this Paragraph. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

12.02 Bidding Requirements and Informational Documents

A. The following Bidding Requirements are not Contract Documents:

1. 00 01 07 - Design Professional Seals
2. 00 01 10 - Table of Contents
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4. 00 21 13 - Instructions to Offerers
5. 00 41 13 - Bid Form
6. 00 41 16 - Bid Form Exhibit ‘A’
7. 00 45 01 - Vendor Compliance with Reciprocity on Non-Resident Bidders (TWDB-0459)
8. 00 45 02 - Non-Collusion Certification
9. 00 45 03 - Conflict of Interest Questionnaire
10. 00 45 04 - State Sales Tax Requirements
11. 00 45 05 - Bidder’s Certification (WRD-255)
12. 00 45 06 - TWDB Affirmative Steps Solicitation Report (TWDB-0216)

13. 00 45 07 - TWDB Prime Consultant/Contractor Certification (TWDB-0217)
14. 00 45 08 – TWDB Participation Summary (TWDB-0373)
15. 00 45 09 - Contractor's Act of Assurance (ED-103)
16. 00 45 10 - Contractor's Act of Assurance Resolution (ED-104)
17. 00 45 13 - Qualifications Statement

The Effective Date of the Contract is **[date to be inserted at the time of contract execution]**.

Owner: _____ *(typed or printed)*	Contractor: _____ *(typed or printed)*
By: _____ *(individual's signature)*	By: _____ *(individual's signature)*
Name: _____ *(typed or printed)*	Name: _____ *(typed or printed)*
Title: _____ *(typed or printed)*	Title: _____ *(typed or printed* *(Attach evidence of authority to sign)*
Address for giving notice:	Address for giving notice:
_____	_____
_____	_____
_____	_____
Designated representative:	Designated representative:
Name: _____	Name: _____
Title: _____	Title: _____
Address:	Address:
_____	_____
_____	_____
_____	_____
Phone: _____	Phone: _____
Email: _____	Email: _____

END OF SECTION

00 61 13 PERFORMANCE BOND

Contractor as Principal Name: Mailing address (principal place of business):	**Surety** Name: Mailing address (principal place of business):
Owner Name: Laguna Madre Water District Mailing address (principal place of business): 105 Port Road Port Isabel, Texas 78578	Physical address (principal place of business): Telephone (Main): Telephone (Claims): Surety's state of incorporation:
Contract Project name and number: Lift Station Rehabilitation Project No.1 Laguna Madre Water District Bid # LS-21-3-01 Contract Price: Effective Date of Contract:	***By submitting this bond, Surety affirms that it is licensed to provide and execute this bond and authorized to do business in Texas.***
Bond Bond Amount: 100 percent of Contract Price Date of Bond: (Date of Bond cannot be earlier than Effective Date of Contract)	**Local Agent for Surety** Name: Mailing address (principal place of business): Telephone (Main): ***The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Dept. of Insurance by calling the following toll-free number: 1-800-252-3439.***

Surety and Contractor, intending to be legally bound and obligated to Owner, do each cause this performance bond to be duly executed on its behalf by its authorized officer, agent, or representative. The Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that Contractor as Principal guarantees that the Work done under the Contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices and that if the Contractor as Principal faithfully performs the Work required by the Contract then this obligation will be null and void; otherwise the obligation is to remain in full force and effect. This bond shall remain in effect for 1 year beyond the date of approval of the Project by the Engineer of the Owner, as defined in the General Conditions. Provisions of this bond shall be pursuant to the terms and provisions of Chapter 2253 of Texas Government Code and Chapter 17 of Texas Water Code as amended and all liabilities on this bond shall be determined in accordance with the terms and provisions of said Chapters to the same extent as if they were copied at length herein. Venue lies exclusively in Cameron County, Texas for any legal action.

Contractor as Principal	**Surety**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Email: _____	Email: _____
	(Attach Power of Attorney and place surety seal below)

END OF SECTION

00 61 16 PAYMENT BOND

Contractor as Principal Name: Mailing address (principal place of business):	**Surety** Name: Mailing address (principal place of business):
Owner Name: Laguna Madre Water District Mailing address (principal place of business): 105 Port Road Port Isabel, Texas 78578	Physical address (principal place of business): Telephone (Main): Telephone (Claims): Surety's state of incorporation:
Contract Project name and number: Lift Station Rehabilitation No.1 Laguna Madre Water District Bid # LS-21-3-01 Contract Price: Effective Date of Contract:	***By submitting this bond, Surety affirms that it is licensed to provide and execute this bond and authorized to do business in Texas.***
Bond Bond Amount: 100 percent of Contract Price Date of Bond: (Date of Bond cannot be earlier than Effective Date of Contract)	**Local Agent for Surety** Name: Mailing address (principal place of business): Telephone (Main): ***The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Dept. of Insurance by calling the following toll-free number: 1-800-252-3439.***

Surety and Contractor intending to be legally bound and obligated to Owner do each cause this payment bond to be duly executed on its behalf by its authorized officer, agent, or representative. The Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that if the Contractor as Principal pays all claimants providing labor or materials to Contractor or to a Subcontractor in the prosecution of the Work required by the Contract then this obligation will be null and void; otherwise the obligation is to remain in full force and effect. This bond shall remain in effect for 1 year beyond the date of approval of the Project by the Engineer of the Owner, as defined in the General Conditions. Provisions of the bond shall be pursuant to the terms and provisions of Chapter 2253 of Texas Government Code and Chapter 17 of Texas Water Code as amended and all liabilities on this bond shall be determined in accordance with the terms and provisions of said Chapters to the same extent as if they were copied at length herein. Venue lies exclusively in Cameron County, Texas for any legal action.

Contractor as Principal	**Surety**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Email: _____	Email: _____
	(Attach Power of Attorney and place surety seal below)

END OF SECTION

00 72 00 GENERAL CONDITIONS

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. A term with initial capital letters, including the term's singular and plural forms, has the meaning indicated in this Paragraph wherever used in the Bidding Requirements or Proposal Requirements or Contract Documents. In addition to the terms specifically defined, terms with initial capital letters in the Contract Documents may include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Documents issued prior to the receipt of Bids or Proposals which clarify or modify the Bidding Requirements/Proposal Requirements or the proposed Contract Documents.

2. *Agreement*—The document signed by Owner and Contractor that establishes the Contract Price and Contract Times, and designates the specific documents that are Contract Documents.

3. *Application for Payment*—The documents used by Contractor to request payments from Owner and the supporting documentation required by the Contract Documents.

4. *Bid; Proposal*—An offer submitted to Owner for the Project setting forth the Contract Price and Contract Times for the Work to be performed.

5. *Bidding Documents; Proposal Documents*—The Bidding Requirements or Proposal Requirements, the proposed Contract Documents, and Addenda.

6. *Bidding Requirements; Proposal Requirements*—The Invitation to Bid or Request for Proposals, Instructions to Offerors, Bid Security or Proposal Security, Bid Form or Proposal Form and attachments, and required certifications and affidavits.

7. *Bid Security; Proposal Security*—The financial security provided by Offeror at the time the Bid or Proposal is submitted and held by Owner until the Agreement is executed and the evidence of insurance and bonds required by the Contract Documents are provided.

8. *Change Order*—A document issued on or after the Effective Date of the Contract and signed by Owner and Contractor which modifies the Work, Contract Price, Contract Times, or terms and conditions of the Contract.

9. *Change Proposal*—A document submitted by Contractor in accordance with the requirements of the Contract Documents:

    a. Requesting an adjustment in Contract Price or Contract Times;

    b. Contesting an initial decision concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents;

    c. Challenging a Set-off against payment due; or

    d. Seeking other relief with respect to the terms and conditions of the Contract.

10. *Claim*—A demand or assertion by Owner or Contractor submitted in accordance with the requirements of the Contract Documents. A demand for money or services by an entity other than Owner or Contractor is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material.

12. *Construction Manager*—The individual or entity named as Construction Manager in the Agreement and the consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide construction management as advisor services to Owner.

13. *Construction Manager at Risk (CMAR)*—The individual or entity selected by Owner to construct the Project using the Construction Manager at Risk project delivery method. The term Contractor means Construction Manager at Risk in the Contract Documents when the Construction Manager at Risk project delivery method is used.

14. *Contract*—The entire integrated set of documents concerning the Work and describing the relationship between the Owner and Contractor.

15. *Contract Amendment*—A document issued on or after the Effective Date of the Contract and signed by Owner and Contractor which:

    a. Authorizes new phases of the Work and establishes the Contract Price, Contract Times, or terms and conditions of the Contract for the new phase of Work; or

    b. Modifies the terms and conditions of the Contract, but does not make changes in the Work.

16. *Contract Documents*—Those items designated as Contract Documents in the Agreement.

17. *Contract Price*—The monetary amount stated in the Agreement and as adjusted by Modifications, and increases or decreases in unit price quantities, if any, that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

18. *Contract Times*—The number of days or the dates by which Contractor must achieve specified Milestones, achieve Substantial Completion, and complete the Work.

19. *Contractor*—The individual or entity with which Owner has contracted to perform the Work.

20. *Contractor's Team*—Contractor, Subcontractors, Suppliers, and individuals or entities directly or indirectly employed or retained by Contractor, Subcontractors, or Suppliers to perform part of the Work, or anyone for whose acts they may be liable.

21. *Cost of the Work*—The sum of costs incurred for the performance of the Work as allowed by Article 13.

22. *Day*—A day of 24 hours measured from midnight to the next midnight.

23. *Defective*—When applied to Work, refers to Work that is unsatisfactory, faulty, or deficient in that it:

    a. Does not conform to the Contract Documents;

b. Does not meet the requirements of applicable inspections, reference standards, tests, or approvals referred to in the Contract Documents; or

c. Has been damaged prior to Construction Manager's recommendation of final payment unless responsibility for the protection of the Work has been assumed by Owner at Substantial Completion in accordance with Paragraphs 15.03 or 15.04.

24. *Design Professional*—The individuals or entity named as the Architect or Engineer in the Agreement and the subconsultants, individuals, or entities directly or indirectly employed or retained by Design Professional to provide design or other technical services to Owner. Design Professional has responsibility for design and technical issues related to the Contract Documents.

25. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work. Shop Drawings and other documents generated by Contractor's Team are not Drawings.

26. *Effective Date of the Contract*—The date indicated in the Agreement on which the Contract becomes effective.

27. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including Shop Drawings and other Submittals, that are in an electronic or digital format.

28. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

29. *Field Order*—A document issued by Construction Manager or Design Professional requiring changes in the Work that do not change the Contract Price or the Contract Times.

30. *Final Completion*—The point where the Work is complete in accordance with the Contract Documents, items and documents required by the Contract Documents have been accepted by Owner and the Project is ready for Final Payment.

31. *Guaranteed Maximum Price (GMP)*—The maximum amount to be paid by Owner for the sum of the Cost of the Work plus Contractor's fee as set forth in the Agreement, subject to increases or decreases for changes in the Work, when the Construction Manager at Risk project delivery method is used.

32. *Hazardous Environmental Condition*—The presence of Constituents of Concern at the Site in quantities or circumstances that may present a danger to persons or property exposed to Constituents of Concern. The presence of Constituents of Concern at the Site necessary for the execution of the Work or to be incorporated into the Work is not a Hazardous Environmental Condition provided these Constituents of Concern are

controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract.

a. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

b. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

33. *Indemnified Costs*—All costs, losses, judgments, and damages resulting from claims or demands against Owner's Indemnitees. These costs include fees for design professionals, attorneys, and other professionals and any legal, court, arbitration, or other dispute resolution costs.

34. *Laws and Regulations; Laws or Regulations*—Applicable laws, statutes, rules, regulations, ordinances, codes, permits, and binding decrees, resolutions, and orders of governmental bodies, agencies, authorities, and courts having jurisdiction over the Project.

35. *Liens*—Charges, security interests, or encumbrances upon Contract related funds, real property, or private property.

36. *Manufacturer*—The individual or entity that designs, casts, fabricates, manufactures, assembles, tests, and provides materials or equipment to be incorporated in the Work.

37. *Milestone*—A principal event in the performance of the Work that Contractor is required by Contract to complete by a specified date or within a specified time.

38. *Modification*—Change made to the Contract Documents by Contract Amendment, Change Order, Field Order, or Work Change Directive.

39. *Notice of Award*—The notice of Owner's acceptance of the Successful Offeror's Bid or Proposal.

40. *Notice to Proceed*—A notice to Contractor of the Contract Times and the date Work is to begin.

41. *Offeror*—An individual or entity that submits a Bid or Proposal to Owner.

42. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

43. *Owner's Budget*—The amounted budgeted by Owner for the construction of the Project.

44. *Owner's Indemnitees*—Each member of OPT and their officers, directors, members, partners, employees, agents, consultants, and subcontractors.

45. *Owner's Project Team (OPT)*—The Owner, Design Professionals, Construction Manager, and the other entities identified in the Supplementary Conditions and the consultants, subconsultants, individuals or entities directly or indirectly employed or retained by them to provide services to Owner.

46. *Progress Schedule*—A schedule prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

47. *Project*—The total undertaking to be accomplished for Owner under the Contract Documents.

48. *Project Construction Manager (PCM)*—The authorized representative of OPT assigned to assist Construction Manager at the Site. The term Project Construction Manager includes assistants and field staff of Construction Manager.

49. *Project Management Information System (PMIS)*—The online project management system that will be used by OPT and Contractor to submit and share documentation and other related communications and information for this Project.

50. *Samples*—Physical examples of materials, equipment, or workmanship representing some portion of the Work that are used to establish the standards for that portion of the Work.

51. *Schedule of Anticipated Payments*—A detailed tabulation, prepared and maintained by Contractor, showing the anticipated amount of each Application for Payment and the month in which they will be submitted.

52. *Schedule of Submittals*—A detailed tabulation, prepared and maintained by Contractor, of each required submittal and the time requirements for review and approval of each submittal.

53. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for Contractor's Applications for Payment.

54. *Set-off*–A reduction in payment due to Contractor under Article 15.

55. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by Contractor's Team and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

56. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed. The Site includes rights-of-way, easements, and other lands or areas furnished by Owner which are designated for use by Contractor.

57. *Specifications*—The part of the Contract that describes the requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

58. *Subcontractor*—An individual or entity having a direct contract with Contractor or with other Subcontractors or Suppliers for the performance of a part of the Work.

59. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Construction Manager, or that is indicated as a Submittal in the Schedule of Submittals accepted by Construction Manager. Submittals, whether approved or accepted by OPT, are not Contract Documents.

60. *Substantial Completion*—The point where the Work or a specified part of the Work is sufficiently complete to be used for its intended purpose in accordance with the Contract Documents.

61. *Successful Offeror*—The Offeror to which Owner awards the Contract.

62. *Supplementary Conditions*—The part of the Contract that amends or supplements the General Conditions.

63. *Supplier*—A Manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with Subcontractors or other Suppliers to furnish materials or equipment to be incorporated in the Work.

64. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions with respect to either:

    a. Existing subsurface conditions at or adjacent to the Site;

    b. Existing physical conditions at or adjacent to the Site including existing surface or subsurface structures at the Site, except Underground Facilities; or

    c. Hazardous Environmental Conditions at the Site.

65. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site , including those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

66. *Unit Price Work*—Work to be paid for based on unit prices.

67. *Work*—The construction of the Project or its component parts as required by the Contract Documents. Work includes and is the result of performing and providing all labor, services, and documentation to construct the Project; providing all materials and equipment to be incorporated into the Project, and providing related services for testing, startup and commissioning, all as required by the Contract Documents.

68. *Work Change Directive*—A directive issued to Contractor on or after the Effective Date of the Contract ordering an addition, deletion, or revision in the Work. The Work Change Directive serves as a memorandum of understanding regarding the directive until a Change Order can be issued.

1.02 Terminology

A. The words and terms discussed in this Paragraph 1.02 are not defined terms that require initial capital letters, but when used in the Bidding Requirements or Proposal Requirements or Contract Documents, have the indicated meaning.

B. Contract Documents are written using imperative language:

    1. Simple imperative sentence structure is used which places a verb as the first word in the sentence. It is understood that the words “furnish,” “install,” “perform,” “provide,” or similar words include the meaning of the phrase “Contractor shall...” before these words.

2. Unless specifically stated that action is to be taken by OPT or others, it is understood that the action described is a requirement of Contractor.

C. The use of the words “furnish,” “install,” “perform,” and “provide” have the following meanings when used relating to services, materials, or equipment:

1. Furnish means to supply and deliver the specified services, materials, or equipment to the Site or other specified location ready for use or installation.

2. Install means to complete construction or assembly of the specified services, materials, or equipment so they are ready for their intended use.

3. Perform or provide means to furnish and install specified services, materials, or equipment, complete and ready for their intended use.

4. Perform or provide the specified services, materials, or equipment complete and ready for intended use if the Contract Documents require specific services, materials, or equipment, but do not expressly use the words “furnish,” “install,” “perform,” or “provide.”

D. The meaning and intent of certain terms or adjectives are described as follows:

1. The terms “as allowed,” “as approved,” “as ordered,” “as directed,” or similar terms in the Contract Documents indicate an exercise of professional judgment by OPT.

2. Adjectives like “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or similar adjectives are used to describe a determination of OPT regarding the Work.

3. Any exercise of professional judgment by OPT will be made solely to evaluate the Work for general compliance with the Contract Documents unless there is a specific statement in the Contract Documents indicating otherwise.

4. The use of these or similar terms or adjectives does not assign a duty or give OPT authority to supervise or direct the performance of the Work, or assign a duty or give authority to OPT to undertake responsibilities contrary to the provisions of Article 9, Article 10 or other provisions of the Contract Documents.

E. Requirements apply to all Work of the same kind, class, and type even though the word “all” or “any” is not stated.

F. The terms "includes" and “including" are used as terms of enlargement and not of limitation or exclusive enumeration, and use of these terms does not create a presumption that components not expressed are excluded. The terms “consist of” or “consisting of” limits the interpretation to only those items specifically listed.

G. It is understood that the cost of providing Work is included in the Contract Price and no additional compensation is to be paid by Owner unless specifically stated otherwise in the Contract Documents. Expressions like “at no additional cost to Owner,” “at Contractor’s expense,” or similar words mean that Contractor is to include the cost of this Work in their Contract Price and perform or provide specified Work without an increase in the Contract Price.

H. Words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with this recognized meaning unless stated otherwise in the Contract Documents.

I. Written documents are required where reference is made to notices, reports, approvals, consents, statements, instructions, opinions, or other types of documentation or communications required by the Contract Documents. Approval and consent documents must be received by Contractor prior to the action or decision for which approval or consent is given. These may be made in printed or electronic format through OPT's Project Management Information System or other electronic media as required by the Contract Documents or approved by Construction Manager.

J. Giving notice as required by the Contract Documents may be by printed or electronic media using a method that requires acknowledgment of the receipt of that notice.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

A. Provide required bonds and evidence of insurance required by the Contract Documents to Construction Manager with the executed Agreement.

B. Evidence of insurance must include copies of the insurance policies, including all endorsements, and identification of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

2.02 Copies of Documents

A. OPT will furnish one copy of the executed Contract Documents in electronic portable document format (PDF). This document is the Project Record Copy of the Contract Documents.

2.03 Before Starting Construction

A. Provide the following preliminary documents in accordance with the Contract Documents within 10 days after the Effective Date of the Contract:

1. Progress Schedule;
2. Schedule of Submittals;
3. Schedule of Values; and
4. Schedule of Anticipated Payments.

B. Designate the specific individuals authorized to act as representatives of Contractor. These individuals must have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of Contractor.

C. Owner will designate the specific individuals authorized to act as representatives of Owner and the limits of their authority regarding acting on behalf of Owner.

2.04 Electronic Transmittals

A. Except as otherwise stated elsewhere in the Contract Documents, the OPT and Contractor will send and accept Electronic Documents sent by Electronic Means using the protocols specified in Section 01 33 00 "Document Management."

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

A. Requirements of each part of the Contract Documents are as binding as if required by all Contract Documents. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all the Work required to complete the Project. Additional details required for construction of the Project are to be provided by Contractor and coordinated with OPT.

B. Provide the labor, documentation, services, materials, or equipment that may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result, whether specifically called for in the Contract Documents or not. Include these related costs in the offered Contract Price.

C. Provide equipment that is functionally complete as described in the Contract Documents. The Drawings and Specifications do not indicate or describe all the Work required to complete the installation of equipment purchased by the Owner or Contractor. Additional details required for the correct installation of selected equipment are to be provided by Contractor and coordinated with Design Professional through Construction Manager.

D. Comply with the most stringent requirements where compliance with two or more standards is specified and they establish different or conflicting requirements for the Work, unless the Contract Documents indicate otherwise.

E. Provide materials and equipment comparable in quality to similar materials and equipment incorporated in the Project or as required to meet the minimum requirements of the application if the materials and equipment are shown in the Drawings but are not included in the Specifications.

F. The Project Record Copy of the Contract Documents governs if there is a discrepancy between the Project Record Copy of the Contract Documents and subsequent electronic or digital versions of the Contract Documents, including printed copies derived from these electronic or digital versions.

G. The Contract supersedes all prior written or oral negotiations, representations, and agreements. The Contract Documents comprise the entire Agreement between Owner and Contractor. The Contract Documents may be modified only by a Modification.

H. Request clarification from Construction Manager for a decision before proceeding if Contractor is not clear on the meaning of the Contract Documents. Construction Manager is to issue clarifications and interpretations of the Contract Documents in accordance with the Contract Documents.

I. Organization of the Documents:

1. Organization of the Contract Documents is not intended to control or lessen the responsibility of Contractor when dividing Work among Subcontractors or Suppliers, or to establish the extent of Work to be performed by trades, Subcontractors, or Suppliers, except on multi-prime contracts. Specifications or details do not need to be indicated or specified in each Specification or Drawing. Items shown in the Contract Documents are applicable regardless of their location in the Contract Documents.

2. Standard Paragraph titles and other identifications of subject matter in the Specifications are intended to aid in locating and recognizing various requirements of the Specifications. Titles do not define, limit, or otherwise restrict Specification text.

3. The Contract requirements described in the General Conditions, Supplementary Conditions, and General Requirements (Division 01 Sections of the Specifications) apply to Work regardless of where it is described in the Contract Documents, unless specifically noted otherwise.

4. Specifications or details do not need to be indicated or specified in each Specification or Drawing. Items shown in the Contract Documents are applicable regardless of their location in the Contract Documents.

J. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

K. Nothing in the Contract Documents creates:

1. a contractual relationship between OPT and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

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

3.02 Reference Standards

A. Standard Specifications, Codes, Laws and Regulations:

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of technical societies, organizations, or associations, or to Laws or Regulations, whether specific or implied, are those in effect at the time Contractor's Bid or Proposal is submitted or when Contractor negotiates the Contract Price unless specifically stated otherwise in the Contract Documents.

2. No provision of referenced standard specifications, manuals, reference standards, codes, or instructions of a Supplier changes the duties or responsibilities of OPT or Contractor from those described in the Contract Documents or assigns a duty to or gives authority to OPT to supervise or direct the performance of the Work or undertake responsibilities inconsistent with the Contract Documents.

3. The provisions of the Contract Documents take precedence over standard specifications, manuals, reference standards, codes, or instructions of a Supplier unless specifically stated otherwise in the Contract Documents.

B. Comply with applicable construction industry standards, whether referenced or not.

1. Standards referenced in the Contract Documents govern over standards not referenced but recognized as applicable in the construction industry.

2. Comply with the requirements of the Contract Documents if they produce a higher quality of Work than the applicable construction industry standards.

3. Submit questions regarding which code or standard is applicable to Construction Manager. Design Professional will determine whether a code or standard is applicable, which of several codes or standards are applicable, or if the Contract Documents produce a higher quality of Work. Construction Manager will respond to the question as appropriate.

C. Make copies of reference standards available if requested by Construction Manager.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies:

1. Carefully study the Drawings and verify pertinent figures and dimensions with respect to actual field measurements before undertaking the Work. Immediately report conflicts, errors, ambiguities, or discrepancies that Contractor discovers or has actual knowledge of to Construction Manager.

2. Immediately notify the Construction Manager of conflicts, errors, ambiguities, or discrepancies in the Contract Documents or discrepancies between the Contract Documents and:

a. Applicable Laws or Regulations;

b. Actual field conditions;

c. Standard specifications, manuals, reference standards, or codes; or

d. Instructions of Suppliers.

3. Do not proceed with affected Work until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation from Construction Manager or by a Modification to the Contract Documents issued pursuant to Paragraph 11.01, except in an emergency as required by Paragraph 7.12.

4. Contractor is liable to OPT for failure to report conflicts, errors, ambiguities, or discrepancies in the Contract Documents of which Contractor has actual knowledge.

5. Contractor is deemed to have included the most expensive item, system, procedure, etc. in the Contract Price if a conflict, error, ambiguity, or discrepancy in the Contract Documents was known, but not reported prior to submitting the Bid or Proposal or when Contractor negotiates the Contract Price.

3.04 Interpretation of the Contract Documents

A. Submit questions concerning the non-technical or contractual/administrative requirements of the Contract Documents to Construction Manager immediately after the question arises. Construction Manager will provide an interpretation of the Contract Documents regarding these questions and will coordinate the response of OPT to Contractor.

B. Submit questions regarding the design of the Project described in the Contract Documents to Construction Manager immediately after the question arises. Construction Manager will

request an interpretation of the Contract Documents from Design Professional. Construction Manager will coordinate the response of OPT to Contractor.

C. OPT may initiate a Modification to the Contract Documents through Construction Manager if a response to the question indicates that a change in the Contract Documents is required. Contractor may appeal Design Professional's or Construction Manager's interpretation by submitting a Change Proposal.

3.05 Reuse of Documents

A. Contractor's Team has no rights to the Contract Documents and may not use the Contract Documents or copies or electronic media editions of the Contract Documents other than for the construction of this Project. This provision survives final payment or termination of the Contract.

B. Contractor can retain a copy of the Contract Documents for record purposes, unless specifically prohibited by Owner for security reasons. Surrender paper and digital copies of the Contract Documents and other related documents and remove these documents from computer equipment or storage devices as a condition of final payment if Owner so directs.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 Commencement of Contract Times; Notice to Proceed

A. The Contract Times commence to run on the date indicated in the Notice to Proceed. If a Notice to Proceed is not issued, the Contract Times will commence to run 15 days after the Contract is signed by all parties.

B. Begin performing the Work on the date indicated in the Notice to Proceed. Do not begin Work before the date indicated in the Notice to Proceed or prior to providing evidence that insurance required in Article 6 is in effect.

4.02 Progress Schedule

A. Construct the Work in accordance with the Progress Schedule established in accordance with the Contract Documents.

1. Adjust the Progress Schedule as required to accurately reflect actual progress on the Work.

2. Submit proposed adjustments in the Progress Schedule that change the Contract Times in accordance with the requirements of Article 11.

B. Continue performing Work and adhere to the Progress Schedule during disputes or disagreements with Owner. Do not delay or postpone Work pending resolution of disputes or disagreements, or during an appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree.

4.03 Delays in Contractor's Progress

A. Contractor is not entitled to an adjustment in Contract Price or Contract Times for delays, disruptions, or interference caused by or within the control of Contractor's Team.

B. Contractor is entitled to an equitable adjustment in Contract Price or Contract Times if OPT directly delays, disrupts, or interferes with the performance or progress of the Work. Contractor is not entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Owner if this delay is concurrent with a delay, disruption, or interference attributable to or within the control of Contractor's Team.

C. Contractor is entitled to an equitable adjustment in the Contract Times, but not Contract Price, if Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of OPT or Contractor. These adjustments in Contract Times are Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. These unanticipated causes include:

1. Severe and unavoidable natural catastrophes e.g. fires, floods, epidemics, and earthquakes;
2. Acts of war or terrorism;
3. Acts or failures to act of utility owners or other third-party entities other than those third-party utility owners performing other work at or adjacent to the Site as arranged by Owner and, as contemplated in Article 8;
4. The existence of a differing subsurface or physical condition;
5. An Underground Facility not shown or not indicated with reasonable accuracy by the Contract Documents;
6. Hazardous Environmental Conditions; and
7. Delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site unless this other work also for Owner.

D. Contractor is entitled to an equitable adjustment in the Contract Times, but not Contract Price, if Contractor's performance or progress is delayed or disrupted by weather conditions provided such weather conditions exceed those that could normally be expected for the Site in that month of the year, unless other provisions for Weather related delays are included in the Contract Documents. Contractor is to include time associated with normal weather-related delays in the Project Schedule and assumes the risks, including costs, associated with delays related to normal weather conditions.

E. Contractor is only entitled to an adjustment of the Contract Times for specific delays, disruptions, and interference to the performance or progress of the Work that can be demonstrated to directly impact the ability of Contractor to complete the Work within the Contract Times. No adjustments in Contract Times are allowed for delays on components of the Work which were or could have been completed without impacting the Contract Times.

F. Notify Construction Manager immediately of a potential delaying, disrupting, or interfering event. Submit a Change Proposal seeking an adjustment in Contract Price or Contract Times within 30 days of the commencement of the delaying, disrupting, or interfering event. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11. Change Proposal seeking an increase in Contract Times or Contract Price submitted must include supporting data that details the following:

1. The circumstances that form the basis for the requested adjustment;
2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference;
5. A revised Progress Schedule indicating all the activities affected by the delay, disruption, or interference;
6. An explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work;
7. The impact on Contract Price, in accord with the provisions of Paragraph 11.07; and
8. Such additional supporting documentation as OPT may require.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

A. Owner will furnish the Site and inform Contractor of encumbrances or restrictions known to Owner related to use of the Site with which Contractor must comply in performing the Work.

B. Provide for additional lands and access Contractor requires for temporary construction facilities or storage of materials and equipment, other than those identified in the Contract Documents. Provide documentation of authority to use these additional lands to Construction Manager before using them.

5.02 Use of Site and Other Areas

A. Confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Owner or Contractor has arranged to use through construction easements or agreements, and other adjacent areas as permitted by Laws and Regulations. Assume full responsibility for damage or injuries which result from the performance of the Work or from other actions or conduct of Contractor's Team, including:

1. Damage to the Site;
2. Damage to adjacent areas used for Contractor's Team's operations;
3. Damage to other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and
4. Injuries and losses sustained by the owners or occupants of these lands or areas.

B. Take the following action if a damage or injury claim is made by the owner or occupant of adjacent land or area because of the performance of the Work, or because of other actions or conduct of Contractor's Team:

1. Take immediate corrective or remedial action as required by Paragraph 7.09; and

2. Attempt to settle the claim through negotiations with the owner or occupant, or otherwise resolve the claim by mediation or other dispute resolution proceeding or at law; and

3. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, INDEMNIFY AND HOLD HARMLESS OWNER'S INDEMNITEES FROM AND AGAINST ANY SUCH CLAIM AND ALL INDEMNIFIED COSTS ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION BROUGHT BY ANY SUCH OWNER OR OCCUPANT AGAINST OWNER'S INDEMNITEES TO THE EXTENT CAUSED DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART BY, OR BASED UPON, CONTRACTOR'S PERFORMANCE OF THE WORK, OR BECAUSE OF OTHER ACTIONS OR CONDUCT OF CONTRACTOR'S TEAM.**

5.03 Subsurface and Physical Conditions

A. The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data; and

2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site, except Underground Facilities, that contain Technical Data.

3. Technical Data contained in these reports and drawings.

B. If no Technical Data have been identified in the Supplementary Conditions, then Technical Data is defined, with respect to conditions at the Site, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, or environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

C. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

D. Contractor may rely upon the accuracy of the Technical Data contained in these reports and drawings, but these reports and drawings are not Contract Documents. Except for this reliance on Technical Data, Contractor may not rely upon or make claims against Owner's Indemnitees with respect to:

1. The completeness of reports and drawings for Contractor's purposes, including aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, or Contractor's safety precautions and programs; or

2. Other data, interpretations, opinions, and information contained in these reports or shown or indicated in the drawings; or

3. The contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or

4. Contractor's interpretation of or conclusions drawn from Technical Data or other data, interpretations, opinions, or information.

5.04 Differing Subsurface or Physical Conditions

A. Notify Construction Manager immediately, but in no event later than 3 days, after becoming aware of a subsurface or physical condition that is uncovered or revealed at the Site, and before further disturbing the subsurface or physical conditions or performing any related Work that:

1. Establishes that the Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;

2. Requires a change in the Drawings or Specifications;

3. Differs materially from that shown or indicated in the Contract Documents; or

4. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

B. Do not further disturb or perform Work related to this subsurface or physical condition, except in an emergency as required by Paragraph 7.12, until permission do so is issued by Construction Manager.

C. Construction Manager is to notify OPT after receiving notice of a differing subsurface or physical condition from Contractor. OPT will:

1. Promptly review the subsurface or physical condition;

2. Determine the necessity of OPT's obtaining additional exploration or tests with respect the subsurface or physical condition;

3. Determine if the subsurface or physical condition falls within one or more of the differing site condition categories in Paragraph 5.04.A;

4. Prepare recommendations regarding Contractor's resumption of Work relating to the subsurface or physical condition in question;

5. Determine the need for changes in the Drawings or Specifications; and

6. Advise Contractor of OPT's findings, conclusions, and recommendations.

D. Construction Manager is to issue a statement to Contractor regarding the subsurface or physical condition in question and recommend action as appropriate after review of OPT's findings, conclusions, and recommendations. Construction Manager may instruct Contractor to resume Work if OPT determines that the subsurface or physical condition in question has been adequately documented.

E. Contractor is entitled to an equitable adjustment in Contract Price or Contract Times to the extent that a differing subsurface or physical condition causes a change in Contractor's cost or time to perform the Work provided the condition falls within one or more of the categories described in Paragraph 5.04.A. Any adjustment in Contract Price for Work that is

paid for on a unit price basis is subject to the provisions of Paragraph 13.03. Contractor is not entitled to an adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

1. Contractor knew of the existence of the subsurface or physical condition at the time Contractor made an offer to Owner with respect to Contract Price and Contract Times;
2. The existence of the subsurface or physical condition could have been discovered or revealed by examinations, investigations, explorations, tests, or studies of the Site and contiguous areas expressly required by the Bidding Requirements or Proposal Requirements or the Contract Documents prior to when Contractor's Bid or Proposal is submitted or when Contractor negotiates the Contract Price; or
3. Contractor failed to give notice as required by Paragraph 5.04.A.

F. Contractor may submit a Change Proposal no later than 30 days after Construction Manager's issuance of the OPT's statement to Contractor regarding the subsurface or physical condition in question.

5.05 Underground Facilities

A. The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to OPT by the owners of these Underground Facilities or by others. OPT is not responsible for the accuracy or completeness of information or data provided by others that OPT makes available to Contractor. Contractor is responsible for:

1. Reviewing and checking available information and data regarding existing Underground Facilities at the Site;
2. Complying with Laws and Regulations related to locating Underground Facilities before beginning Work;
3. Locating Underground Facilities shown or indicated in the Contract Documents;
4. Coordinating the Work with the owners, including Owner, of Underground Facilities during construction; and
5. The safety and protection of existing Underground Facilities at or adjacent to the Site and repairing damage resulting from the Work.

B. Notify Construction Manager and the owner of the Underground Facility immediately if an Underground Facility is uncovered or revealed at the Site that was not shown in the Contract Documents or was not shown with reasonable accuracy in the Contract Documents. Do not further disturb conditions or perform Work affected by this discovery, except in the event of an emergency as required by Paragraph 7.12.

C. OPT is to take the following action after receiving notice from Construction Manager:

1. Promptly review the Underground Facility to determine if the Underground Facility was shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy;
2. Identify and communicate with the owner of the Underground Facility;

3. Prepare recommendations to OPT regarding Contractor's resumption of Work relating to this Underground Facility;

4. Determine the extent to which a change is required in the Drawings or Specifications to document the consequences of the existence or location of the Underground Facility; and

5. Construction Manager will advise Contractor of OPT's findings, conclusions, and recommendations and provide revised Drawings and Specifications if required.

D. Construction Manager is to issue a statement to Contractor regarding the Underground Facility in question and recommend action as appropriate after review of OPT's findings, conclusions, and recommendations.

E. Contractor is entitled to an equitable adjustment in the Contract Price or Contract Times as provided in Paragraphs 11.04 and 11.05 to the extent that the existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy. Any adjustment in Contract Price for Work that is paid for on a unit price basis is subject to the provisions of Paragraph 13.03.

F. Contractor is not entitled an adjustment in the Contract Price or Contract Times with respect to an existing Underground Facility at the Site if:

1. Contractor knew of the existence of the existing Underground Facility at the Site at the time Contractor made an offer to Owner with respect to Contract Price and Contract Times;

2. The existence of the existing Underground Facility at the Site could have been discovered or revealed by examinations, investigations, explorations, tests, or studies of the Site and contiguous areas expressly required by the Bidding Requirements or Proposal Requirements or the Contract Documents prior to when Contractor's Bid or Proposal is submitted or when Contractor negotiates the Contract Price; or

3. Contractor failed to give notice as required by Paragraph 5.05.B.

G. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of adjustments in the Contract Price or Contract Times no later than 30 days after Construction Manager's issuance of OPT's statement to Contractor regarding the Underground Facility.

5.06 Hazardous Environmental Conditions at Site

A. The Supplementary Conditions identify those reports and drawings known to OPT relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and the Technical Data contained in these reports and drawings.

B. Contractor may rely upon the accuracy of the Technical Data contained in reports and drawings relating to Hazardous Environmental Conditions identified in the Supplementary Conditions, but these reports and drawings are not Contract Documents. Except for the reliance on expressly identified Technical Data, Contractor may not rely upon or make claims against Owner's Indemnitees with respect to:

1. The completeness of these reports and drawings for Contractor's purposes, including aspects of the means, methods, techniques, sequences, and procedures of

construction to be employed by Contractor or Contractor's safety precautions and programs related to Hazardous Environmental Conditions;

2. Other data, interpretations, opinions, and information contained in these reports or shown or indicated in the drawings; or

3. Any Contractor interpretation of or conclusion drawn from Technical Data or other data, interpretations, opinions, or information.

C. The results of tests performed on materials described in environmental reports specifically prepared for the Project and made available to Contractor are defined as Technical Data unless Technical Data has been defined more specifically in the Supplementary Conditions.

D. Contractor is not responsible for removing or remediating Hazardous Environmental Conditions encountered, uncovered, or revealed at the Site unless this removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

E. Contractor is responsible for controlling, containing, and duly removing and remediating Constituents of Concern brought to the Site by Contractor's Team and paying associated costs.

1. Owner may remove and remediate the Hazardous Environmental Condition and impose a Set-off against payments to Contractor for associated costs if Contractor's Team creates a Hazardous Environmental Condition and Contractor does not take acceptable action to remove and remediate the Hazardous Environmental Condition.

2. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER'S INDEMNITEES FROM AND AGAINST ALL CLAIMS AND INDEMNIFIED COSTS ARISING OUT OF OR RELATING TO THE FAILURE TO CONTROL, CONTAIN, OR REMOVE A CONSTITUENT OF CONCERN BROUGHT TO THE SITE BY CONTRACTOR'S TEAM, OR TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR'S TEAM. NOTHING IN THIS PARAGRAPH SHALL OBLIGATE CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.**

F. Immediately notify Construction Manager and take the following action if Contractor uncovers or reveals a Hazardous Environmental Condition at the Site or adjacent areas used by Contractor's Team that was not created by Contractor's Team:

1. Secure or otherwise isolate this condition;

2. Stop Work in affected areas or connected with the condition, except in an emergency as required by Paragraph 7.12; and

3. Do not resume Work relating to the Hazardous Environmental Condition or in affected areas until after OPT has obtained required permits and Construction Manager sends notice to Contractor:

a. Specifying that this condition and affected areas are or have been rendered safe for the resumption of Work; or

b. Specifying special conditions under which Work may be resumed safely.

4. Owner may order the portion of the Work that is in the area affected by the Hazardous Environmental Condition to be deleted from the Work following the procedures in Article 11 if Contractor does not agree to:

    a. Resume the Work based on a reasonable belief it is unsafe; or

    b. Resume the Work under the special conditions provided by Construction Manager.

5. Owner may have this deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

G. Contractor may submit a Change Proposal or Owner may impose a Set-off if an agreement is not reached within 10 days of Construction Manager's notice regarding the resumption of Work as to whether Contractor is entitled to an adjustment in Contract Price or Contract Times or on the amount or extent of adjustments resulting from this Work stoppage or special conditions under which Contractor agrees to resume Work.

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

ARTICLE 6 – BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

A. Furnish a performance bond in an amount equal to the Contract Price as security for the faithful performance of Work. Contractor is to use amounts paid by Owner to Contractor under the Contract for the performance of the Contract. This bond is to remain in effect until 1 year after the date of final payment.

B. Furnish a payment bond in an amount equal to the Contract Price as security to ensure payment of Contractor's obligations under the Contract Documents. This bond is to remain in effect until 1 year after the date of final payment.

1. Notify Construction Manager of claims filed against the payment bond. Notify the claimant and Construction Manager of undisputed amounts and the basis for challenging disputed amounts when a claimant has satisfied the conditions prescribed by Laws and Regulations. Promptly pay undisputed amounts.

2. Owner is not liable for payment of costs or expenses of claimants under the payment bond. Owner has no obligations to pay, give notice, or take other action to claimants under the payment bond.

3. OPT will provide a copy of the payment bond and payment information to Subcontractors, Suppliers, or other persons or entities claiming to have furnished labor or materials used in the performance of the Work that request this information in accordance with Laws and Regulations.

C. Notify Construction Manager immediately if the surety on bonds furnished by Contractor:

1. Is declared bankrupt, or becomes insolvent;

2. Has its right to do business in state in which the Project is located is terminated; or

3. Ceases to meet the requirements of Paragraph 6.02.

Provide a bond and surety which comply with the requirements of Paragraph 6.02 within 20 days after the event giving rise to this notification.

D. Furnish other bonds as required by the Contract Documents.

E. Owner may exclude Contractor from the Site and exercise Owner's termination rights under Article 16 if Contractor fails to obtain or maintain required bonds.

6.02 Licensed Sureties

A. Provide bonds in the form prescribed by the Contract Documents from sureties named in the U.S. Department of the Treasury's Listing of Approved Sureties (Department Circular 570 "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies").

B. Provide bonds required by the Contract Documents from surety companies that are duly licensed or authorized to provide bonds in the state in which the Project is constructed.

6.03 Insurance - General Provisions

A. Obtain and maintain insurance with coverage amounts equal to or greater than the amounts specified in Section 00 73 16 "Insurance Requirements" or greater where required by Laws and Regulations.

B. Obtain insurance from companies that are duly licensed or authorized in the state in which the Project is constructed to issue insurance policies and that have an A.M. Best rating of A--VIII or better.

C. Deliver evidence of insurance in accordance with Section 00 73 16 "Insurance Requirements" to Owner to demonstrate that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Provide copies of these certificates to Owner and additional insured.

D. Furnish copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles upon request by Owner or any additional insured. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this paragraph.

E. OPT's failure to demand such certificates or other evidence of Contractor's full compliance with the insurance requirements or failure to identify a deficiency in compliance from the evidence provided is not a waiver of Contractor's obligation to obtain and maintain the insurance required by the Contract Documents.

F. Notify Owner if Contractor fails to purchase or maintain the insurance required by the Contract Documents. Do not perform any Work on the Project unless the required insurance policies are in effect. Owner may exclude Contractor from the Site and exercise Owner's termination rights under Article 16 if Contract fails to obtain or maintain the required insurance.

G. Owner may elect to obtain equivalent insurance to protect Owner's interests without prejudice to any other right or remedy if Contractor fails to obtain or maintain the required

insurance. Owner may impose a reasonable Set-off against payments due under Article 15 to recover the cost of the insurance.

H. Owner does not represent that the insurance coverage and limits established in this Contract are adequate to protect Contractor or Contractor's interests.

I. The required insurance and insurance limits do not limit Contractor's liability under the indemnities granted to Owner's Indemnitees in the Contract Documents.

J. Provide for an endorsement that the "other insurance" clause will not apply to OPT where OPT is an additional insured shown on the policy. Contractor's insurance is primary and non-contributory with respect to any insurance or self-insurance carried by OPT for liability arising out of operations under this Agreement.

K. Include and list OPT and any other individuals or entities identified in the Section 00 73 16 "Insurance Requirements" as additional insureds on all policies except for the workers' compensation policy and Contractor's professional liability policy.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 Contractor's Means and Methods of Construction

A. Contractor is solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. Provide professional engineering or other design services if the Contract Documents require such services or if Contractor determines that such services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety. Engineering or other design services are to be provided by a properly licensed design professional authorized to provide these services in the state in which the Project is constructed. Such services are not Owner-delegated professional design services under this Contract, and OPT does not have any responsibility with respect to:

1. Contractor's determination of the need for such services;

2. The qualifications or licensing of the design professionals retained or employed by Contractor;

3. The performance of such services; or

4. Any errors, omissions, or defects in such services.

7.02 Supervision and Superintendence

A. Supervise, inspect, and direct the performance of the Work.

B. Provide a competent resident superintendent acceptable to OPT. The resident superintendent or acceptable qualified assistant is to always be present when Work is being done. Do not replace this resident superintendent except under extraordinary circumstances. Provide a replacement resident superintendent equally competent to the previous resident superintendent if replacement is required. Notify Owner prior to replacing the resident superintendent and obtain Owner's consent to the change in superintendent.

7.03 Labor; Working Hours

A. Provide competent, suitably qualified personnel to complete the Work. Maintain good discipline and order at the Site. Contractor is responsible for all acts and omissions of Contractor's Team.

B. Perform Work at the Site during regular working hours except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent to the Site and except as otherwise stated in the Contract Documents.

C. Do not perform Work on a Saturday, Sunday, or Owner-observed holiday without Construction Manager's consent. If a legal holiday falls on a Saturday, it will be observed the preceding Friday. If a legal holiday falls on a Sunday, it will be observed the following Monday.

D. Pay additional cost incurred by Owner for services of Construction Manager to observe Work constructed outside of regular working hours. Construction Manager will issue a Set-off in the Application for Payment for this cost per Paragraph 15.01.B.

7.04 Services, Materials, and Equipment

A. Provide services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and other facilities and incidentals necessary for the performance, testing, startup, and completion of the Work, whether or not these items are specifically called for in the Contract Documents.

B. Provide new materials and equipment to be incorporated into the Work. Provide special warranties and guarantees required by the Contract Document. Provide satisfactory evidence, including reports of required tests, as to the source, kind, and quality of materials and equipment as required by the Contract Documents or as requested by Construction Manager.

C. Store, apply, install, connect, erect, protect, use, clean, and condition materials and equipment in accordance with instructions of the applicable Supplier, unless otherwise required by the Contract Documents.

7.05 Concerning Subcontractors, and Suppliers

A. Contractor may retain Subcontractors and Suppliers which are acceptable to Owner for the performance of parts of the Work. Contractor must retain specific Subcontractors or Suppliers if required to do so by the Contract Documents. Contractor must use Subcontractors or Suppliers named in the Bid or Proposal if Contractor was selected in part based on these named Subcontractors or Suppliers.

B. Submit a list of proposed Subcontractors and Suppliers to Construction Manager prior to entering into binding subcontracts or purchase orders. These proposed Subcontractors or Suppliers are deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 10 days after receiving this list.

C. Owner may require the replacement of Subcontractors or Suppliers retained by Contractor. Provide an acceptable replacement for the rejected Subcontractor or Supplier. Owner also

may require Contractor to retain specific replacements, subject to Contractor's reasonable objections.

D. Contractor may be entitled to an adjustment in Contract Price or Contract Times with respect to a replacement of Subcontractors or Suppliers required by Owner. Notify Construction Manager immediately if a replacement of Subcontractors or Suppliers increases the Contract Price or Contract Times. Initiate a Change Proposal for the adjustment within 10 days of Owner's notice to replace a Subcontractor or Supplier. Do not make the replacement until the change in Contract Price or Contract Times has been accepted by Owner if Change Proposal is to be submitted. Contractor is not entitled to an adjustment in Contract Price or Contract Times if OPT requires the replacement of the Subcontractor or Supplier based on an unacceptable safety record, lack of experience or qualifications, or other cause.

E. Acceptance by Owner of Subcontractors, Suppliers, or other individuals or entities, whether initially or as a replacement, does not constitute a waiver of the obligation of Contractor to complete the Work in accordance with the Contract Documents.

F. Maintain a current and complete list of Subcontractors and Suppliers that are to perform or furnish part of the Work.

G. Contractor is fully responsible for the acts and omissions of Subcontractors and Suppliers and is solely responsible for scheduling and coordinating their Work.

H. Require Subcontractors, Suppliers, and other individuals or entities performing or furnishing Work to communicate with OPT through Contractor.

I. Contracts between Contractor and their Subcontractors or Suppliers may specifically bind the Subcontractors or Suppliers to the applicable terms and conditions of the Contract Documents. Contractor is responsible for meeting the requirements of the Contract Documents if they choose to not bind the Subcontractors or Suppliers to applicable terms or conditions of the Contract Documents.

J. OPT may furnish information about amounts paid to Contractor for Work provided by Subcontractors or Suppliers to the entity providing the Work.

K. Nothing in the Contract Documents:

1. Creates a contractual relationship between members of OPT and members of Contractor's Team.

2. Creates an obligation on the part of Owner to pay or to see to the payment of money due members of Contractor's Team, except as may be required by Laws and Regulations.

7.06 Patent Fees and Royalties

A. Pay license fees, royalties, and costs incident to the use of inventions, designs, processes, products, or devices which are patented or copyrighted by others in the performance of the Work, or to incorporate these inventions, designs, processes, products, or devices which are patented or copyrighted by others in the Work. The Contract Documents identify inventions, designs, processes, products, or devices OPT knows are patented or copyrighted by others, or that its use is subject to patent rights or copyrights calling for the payment of a license fee or royalty to others. Contractor is to include the cost associated with the use

of patented or copyrighted products or processes, whether specified or selected by Contractor, in the Contract Price.

B. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER'S INDEMNITEES FROM AND AGAINST ALL CLAIMS AND INDEMNIFIED COSTS ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS BY CONTRACTOR'S TEAM INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE.**

7.07 Permits

A. Obtain and pay for construction permits and licenses, and certificates of occupancy, if required. OPT is to assist Contractor in obtaining permits and licenses when required to do so by applicable Laws and Regulations. Pay governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time the Contractor's Bid or Proposal is submitted or when Contractor negotiates the Contract Price.

7.08 Taxes

A. Contractor is responsible for all taxes and duties arising out of the Work. Contractor is responsible for including in the Contract Price any applicable sales and use taxes and is responsible for complying with all applicable Laws and Regulations. Pay sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations.

7.09 Laws and Regulations

A. Give required notices and comply with Laws and Regulations applicable to the performance of the Work. OPT is not responsible for monitoring Contractor's compliance with Laws or Regulations except where expressly required by applicable Laws and Regulations.

B. Pay costs resulting from actions taken by Contractor that are contrary to Laws or Regulations. Contractor is not responsible for determining that the design aspects of the Work described in the Contract Documents is in accordance with Laws and Regulations. This does not relieve Contractor of its obligations under Paragraph 3.03.

C. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER'S INDEMNITEES HARMLESS FROM ALL CLAIMS AND INDEMNIFIED COSTS RESULTING FROM ACTIONS TAKEN BY CONTRACTOR'S TEAM THAT ARE CONTRARY TO LAWS OR REGULATIONS.**

D. Owner or Contractor may give notice to the other party of changes in Laws or Regulations that may affect the cost or time of performance of the Work, including:

1. Changes in Laws or Regulations affecting procurement of permits; and

2. Sales, use, value-added, consumption, and other similar taxes which come into effect after Contractor's Bid or Proposal is submitted or when Contractor negotiates the Contract Price.

E. Contractor may submit a Change Proposal or Owner may initiate a Claim within 30 days of this notice if Owner and Contractor are unable to agree on entitlement to or on the amount or extent of adjustments in Contract Price or Contract Times resulting from these changes.

7.10 Safety and Protection

A. Contractor is solely responsible for initiating, maintaining, and supervising safety precautions and programs relating to the Work. This responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their Work, nor for compliance with applicable safety Laws and Regulations.

B. Take necessary precautions for the safety of persons on the Site or who may be affected by the Work, and provide the necessary protection to prevent damage, injury, or loss to:

1. Work and materials and equipment to be incorporated in the Work, whether stored on or off the Site; and

2. Other property at or adjacent to the Site, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement during construction.

C. Comply with applicable Laws and Regulations relating to the safety and protection of persons or property. Erect and maintain necessary safeguards for safety and protection. Notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site when prosecution of the Work may affect them. Cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

D. Remedy damage, injury, or loss to property referred to in Paragraph 7.09.B caused by Contractor's Team. Pay remediation costs unless the damage or loss is:

1. Attributable to the fault of the Contract Documents,

2. Attributable to acts or omissions of OPT, or

3. Not attributable to the actions or failure to act of Contractor's Team.

E. Contractor's duties and responsibilities for safety and protection of persons or the Work or property at or adjacent to the Site continues until Work is completed and resumes whenever Contractor's Team returns to the Site to fulfill warranty or correction obligations or to conduct other tasks.

F. Comply with the applicable requirements of the Owner's safety program if required to do so in the Supplementary Conditions. A copy of the Owner's safety program will be provided in the Bidding Documents or Proposal Documents.

G. Provide a qualified and experienced safety representative at the Site whose duties and responsibilities are the prevention of accidents and maintaining and supervising safety programs.

7.11 Hazard Communication Programs

A. Coordinate the exchange of safety data sheets or other hazard communication information required to be made available or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.12 Emergencies

A. Act to prevent threatened damage, injury, or loss in emergencies affecting the safety or protection of persons or the Work or property at or adjacent to the Site. Notify Construction Manager immediately if Contractor believes that significant changes in the Work or variations from the Contract Documents have been caused or are required because of this need to act. A Modification is to be issued by Construction Manager if OPT determines that the incident giving rise to the emergency action was not the responsibility of Contractor and that a change in the Contract Documents is required because of the action taken by Contractor in response to this emergency.

7.13 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that Work is in accordance with the Contract Documents and is not Defective. Owner is entitled to rely on Contractor's warranty and guarantee. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 7.14. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.13 is limited only by applicable Laws and Regulations restricting actions to enforce such rights. Assume and bear responsibility for costs and time delays associated with variations from the requirements of the Contract Documents.

B. This Contractor's warranty and guarantee excludes defects or damage caused by abuse, improper maintenance or operation, or modification by OPT; or normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete Work in accordance with the Contract Documents is absolute. None of the following constitute an acceptance of Defective Work, a release of Contractor's obligation to perform Work in accordance with the Contract Documents or a release of Owner's warranty or guarantee rights under this Paragraph:

1. Observations by OPT;
2. Recommendation by Construction Manager or payment by Owner of progress or final payments;
3. The issuance of a certificate of Substantial Completion;
4. The issuance of a certificate of Final Completion
5. The end of the correction period established in Paragraph 7.14
6. Use or occupancy of part of the Work by Owner;
7. Review and approval of a Shop Drawing or Sample;
8. Inspections, tests, or approvals by others; or
9. Correction of Defective Work by Owner.

D. The Contract Documents may require Contractor to accept the assignment of a contract between the Owner and a contractor or supplier. The specific warranties, guarantees, and correction obligations contained in an assigned contract govern with respect to Contractor's performance obligations to Owner for the Work described in an assigned contract.

7.14 Correction Period

A. Promptly correct Defective Work without cost to Owner for 1 year after the date of Substantial Completion or longer periods of time prescribed by the terms of the Contract Documents.

B. Promptly correct damages to the Site or adjacent areas that Contractor has arranged to use through construction easements or other agreements. Promptly correct damages to Work or the work of others. Make corrections without cost to Owner.

C. Owner may have the Defective Work and damages described in Paragraphs 7.14.A and 7.14.B corrected if Contractor does not comply with the terms of Construction Manager's instructions, or in an emergency where delay would cause serious risk of loss or damage.

D. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR THE CONTRACT DOCUMENTS AND TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER'S INDEMNITEES HARMLESS FROM AND AGAINST ALL CLAIMS AND INDEMNIFIED COSTS ARISING OUT OF OR RELATING TO THE CORRECTION OF DEFECTIVE WORK.**

E. The correction period starts to run from the date when a specific item of equipment or systems are placed in continuous beneficial use by Owner before Substantial Completion of Work if so provided in the Specifications or if accepted for beneficial use by Owner.

F. The correction period is extended for an additional period of 1 year for Defective Work corrected after the date of Substantial Completion or after the accepted date the correction period starts to run as described in Paragraph 7.14.E. This extended correction period starts to run when Defective Work has been satisfactorily corrected under this Paragraph 7.14.

G. Contractor's obligations under this Paragraph 7.14 are in addition to other obligations or warranties. The provisions of this Paragraph 7.14 are not a substitute for, or a waiver of, the provisions of applicable statutes of limitation or repose.

7.15 Indemnification

A. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, AND IN ADDITION TO ANY OTHER OBLIGATIONS OF CONTRACTOR UNDER THE CONTRACT OR OTHERWISE, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER'S INDEMNITEES FROM AND AGAINST ALL CLAIMS AND INDEMNIFIED COSTS ARISING OUT OF OR RELATING TO THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, ACTION, LOSS, OR DAMAGE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO DAMAGE TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM BUT ONLY TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR'S TEAM.**

B. The indemnification obligation under Paragraph 7.15.A is not limited by the amount or type of damages, compensation, or benefits payable by or for members of Contractor's Team or other individuals or entities under workers' compensation acts, disability benefit acts, or other employee benefit acts in claims against Owner's Indemnitees by an employee or the survivor or personal representative of employee of Contractor's Team.

C. The indemnification obligations of Contractor under Paragraph 7.15.A do not extend to the liability of Design Professional arising out of the preparation of the Contract Documents or giving directions or instructions, or failing to give them, to the extent they are obligated to do so if that is the primary cause of the injury or damage.

7.16 Delegation of Professional Design Services

A. Contractor is to provide professional design services required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures.

B. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. This delegation will specify the performance and design criteria that such services must satisfy and the Submittals that Contractor must furnish to Construction Manager with respect to Owner delegated design. Contractor is not required to provide these professional services in violation of applicable Laws and Regulations.

C. Owner-delegated professional design services provided through Contractor are to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and other Submittals prepared by such design professional. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Construction Manager, then such Shop Drawing or other Submittal must bear the design professional's written approval when submitted by Contractor to Construction Manager.

D. OPT is entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by Contractor's design professionals, provided OPT has specified to Contractor the performance and design criteria that these services must satisfy.

E. Pursuant to this Paragraph 7.16, OPT's review and approval of design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this paragraph;

2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and

3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

F. Contractor is not responsible for the adequacy of the performance or design criteria specified by OPT. Advise OPT if the performance or design criteria are known or considered likely to be inadequate or otherwise deficient.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 Other Work

A. Owner may arrange for other work at or adjacent to the Site which is not part of the Contractor's Work. This other work may be performed by Owner's employees or through other contractors. Utility owners may perform work on their utilities and facilities at or adjacent to the Site. Include costs associated with coordinating with entities performing other work or associated with connecting to this other work in the Contract Price if this other work is shown in the Contract Documents.

B. OPT is to notify Contractor of other work prior to starting the work and provide any knowledge they have regarding the start of utility work at or adjacent to the Site to Contractor.

C. Provide other contractors:

1. Proper and safe access to the Site;

2. Reasonable opportunity for the introduction and storage of materials and equipment; and

3. Reasonable opportunity to execute their work.

D. Provide cutting, fitting, and patching of the Work required to properly connect or integrate with other work. Do not endanger the work of others by cutting, excavating, or otherwise altering the work of others without the consent of Construction Manager and the others whose work will be affected.

E. Inspect the work of others and immediately notify Construction Manager if the proper execution of part of Contractor's Work depends upon work performed by others and this work has not been performed or is unsuitable for the proper execution of Contractor's Work. Contractor's failure to notify Construction Manager constitutes an acceptance of this other work as acceptable for integration with Contractor's Work. This acceptance does not apply to latent defects or deficiencies in the work of others.

F. Take adequate measures to prevent damages, delays, disruptions, or interference with the work of Owner, other contractors, or utility owners performing other work at or adjacent to the Site.

G. The provisions of this Article 8 are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.03.

8.02 Coordination

A. Owner has sole authority and responsibility for coordination of this other work unless otherwise provided in the Contract Documents. Owner is to identify the entity with authority and responsibility for coordination of the activities of the various contractors, the limitations of their authority, and the work to be coordinated prior to the start of other work at or adjacent to the Site.

8.03 Legal Relationships

A. Contractor may be entitled to a change in Contract Price or Contract Times if, while performing other work at or adjacent to the Site for Owner, the OPT, other contractor, or utility owner:

1. Damages the Work or property of Contractor's Team;

2. Delays, disrupts, or interferes with the execution of the Work; or

3. Increases the scope or cost of performing the Work through their actions or inaction.

B. Notify Construction Manager immediately of the event leading to a potential Change Proposal so corrective or mitigating action can be taken. Submit the Change Proposal within 30 days of the event if corrective action has not adequately mitigated the impact of the actions or inactions of others. Information regarding this other work in the Contract Documents is used to determine if Contractor is entitled to a change in Contract Price or Contract Times. Changes in Contract Price require that Contractor assign rights against the other contractor or utility owner to Owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Changes in Contract Times require that the time extension is essential to Contractor's ability to complete the Work within the Contract Times.

C. Take prompt corrective action if Contractor's Team damages, delays, disrupts, or interferes with the work of Owner's employees, other contractors, or utility owners performing other work at or adjacent to the Site or agree to compensate other contractors or utility owners for correcting the damage. Promptly attempt to settle claims with other contractors or utility owners if Contractor damages, delays, disrupts, or interferes with the work of other contractors or utility owners performing other work at or adjacent to the Site.

D. Owner may impose a Set-off against payments due to Contractor and assign the Owner's contractual rights against Contractor with respect to the breach of the obligations described in this Paragraph 8.03 to other contractors or utility owners if damages, delays, disruptions, or interference occur.

E. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR THE CONTRACT DOCUMENTS AND TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER'S INDEMNITEES HARMLESS FROM AND AGAINST ALL CLAIMS AND INDEMNIFIED COSTS RESULTING FROM CONTRACTOR'S TEAM'S ACTION OR INACTION RELATED TO DAMAGES, DELAYS, DISRUPTIONS, OR INTERFERENCE WITH THE WORK OF OWNER'S EMPLOYEES, OTHER CONTRACTORS, OR UTILITY OWNERS PERFORMING OTHER WORK AT OR ADJACENT TO THE SITE.**

ARTICLE 9 – OWNER'S AND OPT'S RESPONSIBILITIES

9.01 Communications to Contractor

A. OPT issues communications to Contractor through Construction Manager except as otherwise provided in the Contract Documents.

9.02 Replacement of Owner's Project Team Members

A. Owner may replace members of OPT at its discretion.

9.03 Furnish Data

A. OPT is to furnish the data required of OPT under the Contract Documents.

9.04 Pay When Due

A. Owner is to make payments to Contractor when due as described in Paragraphs 15.01.D and 15.06.D.

9.05 Lands and Easements; Reports and Tests

A. Owner's duties with respect to providing lands and easements are described in Paragraph 5.01. OPT will make copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site available to Contractor in accordance with Paragraph 5.03.

9.06 Insurance

A. Owner's responsibilities with respect to purchasing and maintaining insurance are described in Article 6.

9.07 Modifications

A. Owner's responsibilities with respect to Modifications are described in Article 11.

9.08 Inspections, Tests, and Approvals

A. OPT's responsibility with respect to certain inspections, tests, and approvals are described in Paragraph 14.02.

9.09 Limitations on OPT's Responsibilities

A. OPT does not supervise, direct, or have control or authority over, and is not responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or related safety precautions and programs, or for failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. OPT is not responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

B. OPT is not responsible for the acts or omissions of Contractor's Team. No actions or failure to act, or decisions made in good faith to exercise or not exercise the authority or responsibility available under the Contract Documents creates a duty in contract, tort, or otherwise of OPT to the Contractor or members of Contractor's Team.

9.10 Undisclosed Hazardous Environmental Condition

A. OPT's responsibility for undisclosed Hazardous Environmental Conditions is described in Paragraph 5.06.

9.11 Compliance with Safety Program

A. Contractor is to inform OPT of its safety programs and OPT is to comply with the specific applicable requirements of this program.

ARTICLE 10 – DESIGN PROFESSIONAL'S AND CONSTRUCTION MANAGER'S STATUS DURING CONSTRUCTION

10.01 Owner's Representative

A. Construction Manager is Owner's representative. The duties and responsibilities and the limitations of authority of Construction Manager as Owner's representative are described in the Contract Documents.

10.02 Visits to Site

A. Design Professional is to make periodic visits to the Site to observe the progress and quality of the Work. Design Professional is to determine, in general, if the Work is proceeding in accordance with the Contract Documents based on observations made during these visits. Design Professional is not required to make exhaustive or continuous inspections to check the quality or quantity of the Work. Design Professional is to inform OPT of issues or concerns and Construction Manager is to work with Contractor to address these issues or concerns. Design Professional's visits and observations are subject to the limitations on Design Professional's authority and responsibility described in Paragraphs 9.09 and 10.07.

B. Construction Manager is to observe the Work to check the quality and quantity of Work, implement Owner's quality assurance program and administer the Contract as Owner's representative as described in the Contract Documents. Construction Manager's visits and observations are subject to the limitations on Construction Manager's authority and responsibility described in Paragraphs 9.09 and 10.05.

10.03 Rejecting Defective Work

A. OPT has the authority to reject Work in accordance with Article 14. Construction Manager is to notify Contractor of Defective Work of which it is aware and document when Defective Work has been corrected or accepted in accordance with Article 14.

10.04 Decisions on Requirements of Contract Documents and Acceptability of Work

A. Construction Manager is to render decisions regarding non-technical or contractual/administrative requirements of the Contract Documents and will coordinate the response of OPT to Contractor.

B. Design Professional is to render decisions regarding the conformance of the Work to the requirements of the Contract Documents. Design Professional will render a decision to either correct the Defective Work, or accept the Work under the provisions of Paragraph 14.04, if Work does not conform to the Contract Documents. Construction Manager will coordinate the response of OPT to Contractor.

C. Construction Manager will issue a Request for a Change Proposal if a Modification is required. Construction Manager will provide documentation for changes related to the non-technical or contractual/administrative requirements of the Contract Documents.

Design Professional will provide documentation if design related changes are required through Construction Manager.

D. Contractor may appeal OPT's decision by submitting a Change Proposal if Contractor does not agree with the OPT's decision.

ARTICLE 11 – CHANGES TO THE CONTRACT

11.01 Amending and Supplementing the Contract Documents

A. A Contract Amendment, Change Order, Work Change Directive, or Field Order may modify the Contract Documents. Modifications that include a change in the Contract Price or Contract Times can only be made in a Contract Amendment or Change Order.

B. Changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other design or technical matters, must be supported by Design Professional's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of Design Professional.

C. Proceed with the Changes in the Work or, in the case of a deletion in the Work, immediately cease construction activities related to the deleted Work upon receipt of the Modification.

D. Contractor is not entitled to an increase in the Contract Price or an extension of the Contract Times with respect to Work performed that is not required by the Contract Documents, except in the case of an emergency as provided in Paragraph 7.12, or in the case of uncovering Work as provided in Paragraph 14.05. Contractor is responsible for costs and time delays associated with variations from the requirements of the Contract Documents unless the variations are specifically approved by Change Order.

E. Acceptance of a Modification by Contractor constitutes agreement that the compensation provided by that Modification is the full, complete, and final compensation for all costs Contractor has or may incur because of or relating to this Modification whether these costs are known, unknown, foreseen, or unforeseen at this time, including any cost for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged Work as a result of this Modification.

F. Acceptance of a Modification by Contractor constitutes agreement that the changes in Contract Times are the complete and final adjustments for direct impacts to the ability of Contractor to complete the Work within the Contract Times and are the only adjustments to which Contractor is entitled.

G. Perform added or revised Work under the applicable provisions of the Contract Documents for the same or similar Work unless different Drawings, Specifications, or directions are provided in the Modification.

H. Nothing in this paragraph obligates Contractor to undertake Work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.02 Contract Amendments

A. Owner and Contractor may modify the terms and conditions of the Contract Documents without the recommendation of Design Professional using a Contract Amendment.

B. A Contract Amendment may also be used for authorizing a new task order for task order contracts or a new phase of the Work when using phased construction or purchasing Goods and Special Services to be incorporated into the Project. The Contract Amendment may be used to establish the Contract Price, Contract Times, or terms and conditions of the Contract for the new task order or phase of Work if not already established in the Contract Documents.

11.03 Change Orders

A. All changes to the Contract Documents that include a change in the Contract Price or the Contract Times for previously authorized Work and changes to the Work requiring Design Professional's approval must be made by a Change Order. Change Orders prepared by Construction Manager may cover:

1. Changes in Contract Price or Contract Times which are submitted by Contractor as a Change Proposal and agreed to by the parties;

2. Changes in Contract Price or Contract Times to pay for undisputed Work performed in accordance with a Work Change Directive;

3. Changes in Contract Price or Contract Times making final adjustments for Work covered under Alternates and Allowances;

4. Changes in Contract Price or Contract Times making final adjustments to actual quantities for Unit Price Work;

5. Changes in Contract Price resulting from an Owner Set-off, unless the set off has been successfully challenged by Contractor

6. Changes in Contract Price or Contract Times resulting from resolution of Claims;

7. Changes in Contract Price or Contract Times required because of Owner's acceptance of Defective Work under Paragraph 14.04 or Owner's correction of Defective Work under Paragraph 14.07, or

8. Other similar provisions that will modify the Contract Price or Contract Times.

B. A Change Order may also be used to establish modifications of the Contract Documents that do not affect the Contract Price or Contract Times.

11.04 Work Change Directives

A. A Work Change Directive does not change the Contract Price or the Contract Times, but is evidence that the parties expect that the modifications ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations on the Contract Price and Contract Times.

B. Contractor must submit a Change Proposal seeking an adjustment of the Contract Price or the Contract Times no later than 30 days after the completion of the Work set out in the

Work Change Directive if negotiations are unsuccessful under the terms of the Contract Documents governing adjustments, expressly including Paragraphs 11.04 and 11.05.

11.05 Field Orders

A. Design Professional may require minor changes in the Work that do not change the Contract Price or Contract Times using a Field Order through Construction Manager. Construction Manager may issue a Field Order for non-technical, administrative issues. Submit a Change Proposal if Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times before proceeding with the Work described in the Field Order.

11.06 Change Proposals

A. Submit a Change Proposal to Construction Manager to:

1. Request an adjustment in the Contract Price or Contract Times;
2. Contest an initial decision by OPT concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents;
3. Contest a Set-off against payment due; or
4. Seek other relief under the Contract Documents.

B. Notify Construction Manager immediately if a Change Proposal is to be submitted. Submit each Change Proposal to Construction Manager no later than 30 days after the event initiating the Change Proposal. Submit the following as part of the Change Proposal:

1. Any proposed change in Contract Price, Contract Times, or other relief, accompanied by a statement that the requested Change Order is the entire adjustment to which Contractor believes it is entitled;
2. The reason for the proposed change; and
3. Supporting data, accompanied by a statement that the supporting data is accurate and complete.

C. Construction Manager is to advise OPT regarding the Change Proposal. OPT is to review each Change Proposal and Contractor's supporting data, and within 30 days after receipt of the documents, direct Construction Manager to either approve or deny the Change Proposal in whole or in part. Construction Manager is to issue a Change Order for an approved Change Proposal. Change Proposals are denied if Construction Manager does not act on the Change Proposal within 30 days. Contractor may start the time for appeal of the denial under Article 12.

11.07 Change of Contract Price; Contract Times

A. Change Proposals for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.07. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12. An adjustment of the Contract Times is subject to the limitations described in Paragraph 4.03.

B. An adjustment in the Contract Price is to be determined as follows:

1. By applying unit prices to the quantities of the items involved, subject to the provisions of Paragraph 13.03, where the Work involved is covered by unit prices in the Contract Documents;

2. By a mutually agreed lump sum where the Work involved is not covered by unit prices in the Contract Documents; or

3. Payment based on the Cost of the Work determined as provided in Article 13 when the Work involved is not covered by unit prices in the Contract Documents or the parties do not reach a mutual agreement to a lump sum.

C. The original Contract Price may not be increased by more than 25 percent unless further limited by Laws and Regulations. Owner may decrease the Work by up to 25 percent of the Contract Price without adjusting Contractor's fee.

11.08 Execution of Change Orders and Contract Amendments

A. Each Change Order or Contract Amendment must be specific and final as to changes in Contract Price and Contract Times for the changes described in the Change Order or Contract Amendment. Acceptance of a Change Order or Contract Amendment by Contractor constitutes a full accord and satisfaction for all claims and costs of any kind, whether direct or indirect, including impact, delay, or acceleration damages related to the Change Order or Contract Amendment. The execution of a Change Order or Contract Amendment by Contractor constitutes conclusive evidence of Contractor's agreement to the ordered changes in the Work, with no reservations or other provisions allowing for future changes in the Contract Price or Contract Times. This Contract, as amended, forever releases any claim against Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order or Contract Amendment. This release applies to claims related to the cumulative impact of all Change Orders or Contract Amendment and to any claim related to the effect of a change on unchanged Work.

B. A Change Order or Contract Amendment is deemed to be in full force as if executed by Contractor if Contractor refuses to execute a Change Order or Contract Amendment that is required to be executed under the terms of this Paragraph 11.08.

11.09 Notice to Surety

A. Notify the surety of Modifications affecting the general scope of the Work, changes in the provisions of the Contract Documents, or changes in Contract Price or Contract Times. Adjust the amount of each bond when Modifications change the Contract Price.

ARTICLE 12 – CLAIMS

12.01 Claims

A. Follow the Claims process described in this Article for a demand or assertion by Contractor:

1. Contesting an initial decision by OPT concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents;

2. Contesting OPT's decision regarding a Change Proposal;
3. Seeking resolution of a contractual issue that OPT has declined to address;
4. Seeking other relief with respect to the terms of the Contract; or
5. Any issue, request, demand, or dispute arising after Construction Manager's recommendation of Final Payment not specifically listed in the Certificate of Final Completion.

B. Notify Construction Manager no later than 7 days after the start of the event giving rise to the Claim or, in the case of appeals regarding Change Proposals, within 7 days of the decision under appeal. The responsibility to substantiate a Claim rests with the entity making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Price or Contract Times, Contractor must certify that the Claim is made in good faith, that the supporting data is accurate and complete, and that to the best of Contractor's knowledge and belief, the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

C. The entity receiving a Claim is to review the Claim and consider its merits. The Owner and Contractor are to seek to resolve the Claim through the exchange of information and direct negotiations. The Owner and Contractor may extend the time for resolving the Claim by mutual agreement. Notify Construction Manager of actions taken on a Claim.

D. Owner and Contractor may mutually agree to mediate the underlying dispute at any time after initiation of a Claim.
1. The agreement to mediate suspends the Claims process.
2. Owner or Contractor may unilaterally terminate the mediation process after 60 days from the agreement to mediate and resume the Claims process as of the date of the termination. The Claim process resumes as of the date of the conclusion of the mediation, as determined by the mediator, if the mediation is unsuccessful in resolving the dispute.
3. Owner and Contractor are to each pay one-half of the mediator's fees and costs.

E. If the entity receiving a Claim approves the Claim in part or denies it in part, this action is final and binding unless the other entity invokes the procedure described in Article 17 for final resolution of disputes within 30 days of this action.

F. Notify Construction Manager if efforts to resolve the Claim are not successful and the Claim is denied. A denial of the Claim is final and binding unless the other entity invokes the procedure described in Article 17 for the final resolution of disputes within 30 days of the denial.

G. The results of the agreement or action on the Claim is to be incorporated in a Change Order by Construction Manager to the extent they affect the Contract Documents, the Contract Price, or the Contract Times if the Owner and Contractor reach an agreement regarding a Claim.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

A. The Cost of the Work is the sum of costs described in this Paragraph 13.01, except those excluded in Paragraph 13.01.D, necessary for the proper performance of the Work. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price under cost-plus, time-and-materials, or other cost-based terms; or

2. To determine the value of a Change Order, Change Proposal, Claim, Set-off, or other adjustment in Contract Price.

B. Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the events giving rise to the adjustment when the value of the adjustment is determined on the basis of the Cost of the Work.

C. Costs included in the Cost of the Work may not exceed the costs commonly incurred in the proximate area of the Site for similar work unless agreed to by Owner. Cost of the Work includes only the following items:

1. Payroll costs for Contractor's employees performing the Work, including one foreman per crew, and other required and agreed upon personnel for the time they are employed on the Work. Employees are to be paid according to wage rates for job classifications as agreed to by Owner in advance of the Work. Rates paid for this Work are to be the same as paid for Contract Work as established by certified payroll. Payroll costs may include:

a. Actual costs paid for salaries and wages;

b. Actual cost paid for fringe benefits, which consists of:

1) Social security contributions,

2) Unemployment,

3) Excise and payroll taxes,

4) Workers' compensation,

5) Health and retirement benefits, and

6) Paid time off for sick leave, vacations and holidays; and

c. Actual cost of additional compensation paid for performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, to the extent authorized by Owner.

2. Cost of materials and equipment furnished and incorporated in the Work, including transportation and storage costs and required Suppliers' field services. Contractor may retain cash discounts unless Owner provided funds to Contractor for early payment of these materials and equipment. Cash discounts are to be credited to Owner if Owner provides funds for early payment. Make provisions for trade discounts, rebates, refunds, and returns from sale of surplus materials and equipment and reduce the Cost of the Work by these amounts.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. Obtain competitive bids from Subcontractors acceptable to Owner if required by OPT. Bids are to be opened in the presence of Construction Manager and other designated members for OPT. Provide copies of bids to Construction Manager to use in determining, with OPT, which bids are acceptable. The Subcontractor's Cost of the Work and fee are determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01 if the subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee.

4. Supplemental costs consisting of the following:

    a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work;

    b. Costs of materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site including transportation and maintenance costs related specifically to the Work;

    c. Costs of engineers, architects, testing laboratories, surveyors, employed or retained for services specifically related to the Work.

    d. Actual cost for construction equipment, including the costs of transporting, loading, unloading, assembling, dismantling, and removing construction equipment, whether owned by Contractor or rented from others.

        1) Cost for construction equipment must not exceed the cost shown in the most current edition of the rental rate book named in the Supplemental Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

        2) With respect to Work that is the result of a Change Order, Change Proposal, Claim, Set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

    e. Applicable sales, consumer, use, and other similar taxes related to the Work for which Owner is not exempt, and which Contractor pays consistent with Laws and Regulations;

    f. Deposits lost for causes other than negligence of Contractor's Team;

    g. Royalty payments and fees for permits and licenses;

    h. Cost of additional utilities, fuel, and sanitary facilities at the Site;

    i. Minor expense items directly required by the Work; and

    j. Premiums for bonds and insurance required by the Contract Documents.

D. The Cost of the Work does not include the following administrative costs which are to be covered by the Contractor's fee:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, safety managers, superintendents, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office, for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.C.1.
2. The cost of purchasing, renting or furnishing any tool or equipment whose current price would be less than $500 if purchased new at retail.
3. Office expenses other than Contractor's office at the Site.
4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
5. Costs due to the actions of Contractor's Team for the correction of Defective Work, disposal of materials or equipment that do not comply with Specifications, and correcting damage to property.
6. Losses, damages, and related expenses caused by damage to the Work or sustained by Contractor in connection with the performance of the Work. Contractor is entitled to recover costs if covered by Owner's insurance, if applicable. Such losses may include settlements made with the approval of Owner. Do not include these losses, damages, and expenses in the Cost of the Work when determining Contractor's fee.
7. Expenses incurred in preparing and advancing Claims.
8. Any Indemnified Cost paid with regard to Contractor's indemnification of Owner's Indemnitees.
9. Other overhead or general expense costs and the costs of items not described in Paragraph 13.01.C.
10. Contractor's fee is determined in accordance with the Agreement when the Work is performed on a cost-plus basis.

E. Contractor's Fee is determined as follows for Work included in a Change Proposal.

1. Contractor's fee is 15 percent of the costs included in the Cost of the Work per Paragraph 13.01.C.1 for payroll cost and per Paragraph 13.01.C.2 for cost of materials and equipment furnished and incorporated in the Work.
2. Contractor's fee is 5 percent of costs included in the Cost of the Work paid by Contractor for Work performed by Subcontractors per Paragraph 13.01.C.3.
3. No fee will be payable for costs included in the Cost of the Work for supplemental costs per Paragraph 13.01.C.4.
4. Fees are to be determined as follows where one or more tiers of Subcontracts are used:
    a. The Subcontractor's fee is 15 percent for costs incurred under Paragraphs 13.01.C (excluding Paragraph 13.01.C.3) for the Subcontractor that performs the Work;

b. The Contractor and Subcontractors of a tier higher than that of the Subcontractor that performs the Work are allowed a fee of 5 percent of the total costs incurred by the next lower tier Subcontractor; and

c. Regardless of the number of subcontractor tiers involved, the maximum total fee to be paid by Owner will be no greater than 27% of the costs incurred by the Subcontractor that performs the Work.

F. When a Change Proposal includes additions and credits, the Contractor's fee will be calculated on the sum of costs for each cost category in Paragraph 13.01.C. and applying the appropriate fee from Paragraph 13.01.E. The amount to be credited by Contractor to Owner for any Change Proposal which results in a net decrease in the Cost of Work will be the amount of the actual net decrease in the Cost of Work plus an additional amount equal to 5% of the actual net decrease in the Cost of Work.

G. Establish and maintain records in accordance with generally accepted accounting practices and submit these records, including an itemized cost breakdown together with supporting data, in a form and at intervals acceptable to Construction Manager whenever the Cost of the Work is to be determined pursuant to this Paragraph 13.01.

13.02 Allowances

A. Include allowances specified in the Contract Documents in the Contract Price and provide Work covered by the allowance as authorized by Owner through Construction Manager.

B. Contractor agrees that:

1. The cash allowance is used to compensate Contractor for the cost of furnishing materials and equipment for the Work covered by the allowance item in the Contract Documents. Cost may include applicable taxes. Make provisions for trade discounts, rebates, and refunds and reduce the allowance costs by these amounts.

2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances; and

3. Costs for cash allowances and installation costs as described in Paragraphs 13.02.B.1 and 13.02.B.2 above are included in the Contract Price.

C. Construction Manager will issue a Change Order to adjust the Contract Price by the difference between the allowance amount and the actual amount paid by Contractor for Work covered by the allowance. The Change Order will be issued at the time costs are incurred by Contractor for Work covered by the allowance and this Work is included on the Application for Payment.

13.03 Unit Price Work

A. The initial Contract Price for Unit Price Work is equal to the sum of the unit price line items in the Agreement. Each unit price line item amount is equal to the product of the unit price for each line item times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparing offers and determining an initial Contract Price. Payments to

Contractor for Unit Price Work are to be based on actual quantities measured for Work in place.

C. Each unit price is deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Construction Manager is to determine the actual quantities and classifications of Unit Price Work performed by Contractor to be incorporated into each Application for Payment. Construction Manager's decision on actual quantities is final and binding, subject to the provisions of Paragraph 13.03.E.

E. Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price within 30 days of Construction Manager's decision under Paragraph 13.03.D, if:

1. The total cost of a particular item of Unit Price Work amounts to 20 percent or more of the total Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 20 percent from the estimated quantity of an item indicated in the Agreement;

2. There is no corresponding adjustment with respect to other items of Work; and

3. Contractor believes it has incurred additional expense as a result of this condition or if Owner believes that the quantity variation entitles Owner to an adjustment in the Contract Price.

F. Construction Manager will issue a Change Order adjusting estimated quantities to actual quantities to determine the final Contract Price.

13.04 Contingencies

A. Contingency funds may be included in the Contract Price to pay for Work not defined specifically by the Contract Documents that is essential to the completion of the Project. Contingency funds will be as described in the Agreement.

B. The contingency funds may be used for costs incurred by Contractor, provided these costs are approved by Owner. Costs are to be determined and documented in accordance with Paragraph 13.01. The contingency funds are not to be used for the following items:

1. Cost overruns due to changes in material costs after the Contract Price is established, unless specific price escalation provisions are made in the Agreement.

2. Rework required to correct Defective Work.

3. Inefficiencies in completing the Work due to Contractor's selected means, methods, sequences, or procedures of construction.

4. Work Contractor failed to include in the Contract Price.

5. Changes required by changes in Laws and Regulations enacted after the Contract Price is established.

6. Any Work that does not constitute a change in Scope in the Work included in the Contract Price.

C. Construction Manager is to issue a Change Order for approved expenditures from contingency funds. When the Change Order is issued, the costs are to be added to the

Application for Payment. Contractor is to maintain a tabulation showing the contingency amount, adjustments to the contingency amount, and amounts remaining as the Project progresses.

D. Any contingency amounts that are not included in a Change Order are retained by Owner. A Change Order will be issued to deduct unused contingency amounts from the Contract Price prior to Final Payment.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 Access to Work

A. Provide safe access to the Site and the Work for the observation, inspection, and testing of the Work in progress. Contractor can require compliance with Contractor's safety procedures and programs as part of providing safe access.

14.02 Tests, Inspections, and Approvals

A. OPT may retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform inspections. Cooperate with inspection and testing personnel and assist with providing access for required inspections, tests, and handling test specimens or Samples.

B. Arrange for and facilitate inspections, tests, and approvals required by Laws or Regulations of governmental entities having jurisdiction that require Work to be inspected, tested, or approved by an employee or other representative of that entity. Pay associated costs and furnish Construction Manager with the required certificates of inspection or approval.

C. Arrange, obtain, and pay for inspections and tests required:

1. By the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to OPT;
2. To attain OPT's acceptance of materials or equipment to be incorporated in the Work;
3. By manufacturers of equipment furnished under the Contract Documents;
4. For testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work;
5. For acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work;
6. For re-inspecting or retesting Defective Work, including any associated costs incurred by the testing laboratory for cancelled tests or standby time; and
7. For retesting due to failed tests.

D. Provide independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to OPT to provide these inspections and tests.

14.03 Defective Work

A. It is Contractor's obligation to ensure that the Work is not Defective.

B. OPT has the authority to determine whether Work is Defective and to reject Defective Work.

C. Construction Manager is to notify Contractor of Defective Work of which OPT has actual knowledge.

D. Promptly correct Defective Work.

E. Take no action that would void or otherwise impair Owner's special warranties or guarantees when correcting Defective Work.

F. Pay claims, costs, losses, and damages arising out of or relating to Defective Work, including:

1. Costs for correction, removal, and replacement of Defective Work;

2. Cost of the inspection and testing related to correction of Defective Work;

3. Costs for Design Professional's fees associated with review and approval of design modifications for correction, removal, and replacement of Defective Work.

4. Fines levied against Owner by governmental authorities because of Defective Work; and

5. Costs of repair or replacement of work of others resulting from Defective Work.

14.04 Acceptance of Defective Work

A. Owner may elect to accept Defective Work instead of requiring correction or removal and replacement of Defective Work provided:

1. This acceptance occurs prior to final payment;

2. Design Professional confirms that the Defective Work is in general accordance with the design intent and applicable design principles; and

3. Design Professional confirms that acceptance of the Defective Work does not endanger public health or safety.

B. Owner may impose a reasonable Set-off against payments due under Article 15 for costs associated with OPT's evaluation of Defective Work to determine if it can be accepted and to determine the diminished value of the Work. Owner may impose a reasonable Set-off against payments due under Article 15 if the parties are unable to agree as to the decrease in the Contract Price to compensate Owner for the diminished value of Defective Work accepted. Construction Manager is to issue a Change Order for acceptance of the Defective Work prior to final payment. Pay an appropriate amount to Owner if the acceptance of Defective Work occurs after final payment.

14.05 Uncovering Work

A. OPT has the authority to require inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

B. Work that is covered prior to approval of Construction Manager must be uncovered for OPT's observation if requested by Construction Manager. Pay for uncovering Work and its subsequent restoration unless Contractor has given Construction Manager timely notice of

Contractor's intention to cover the Work and Construction Manager fails to act with reasonable promptness in response to this notice.

C. Provide necessary labor, material, and equipment and uncover, expose, or otherwise make available the portion of the Work suspected of being Defective for observation, inspection, or testing if OPT considers it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others as directed by Construction Manager.

1. Pay for claims, costs, losses, and damages associated with uncovering, exposing, observing, inspecting, and testing if it is found that the uncovered Work is Defective. Pay costs for correction of Defective Work. Pay for reconstruction, repair, or replacement of work of others if it is found that the uncovered Work is Defective.

2. Submit a Change Proposal for an increase in the Contract Price or an extension of the Contract Times directly attributable to this uncovering, exposure, observation, inspection, testing, and reconstruction if the uncovered Work is found to not be Defective.

14.06 Owner May Stop the Work

A. Owner may order Contractor to stop the Work if:

1. The Work is Defective;

2. Contractor fails to supply sufficient skilled workers or suitable materials or equipment; or

3. Contractor performs Work that may fail to conform to the Contract Documents when completed.

B. This stop work order is to remain in effect until the reason for the stop work order has been eliminated. Owner's right to stop the Work does not create a duty to exercise this right for the benefit of Contractor's Team or surety.

14.07 Owner May Correct Defective Work

A. Owner may remedy Defective Work after 7 days' notice to Contractor if Contractor fails to correct Defective Work, or to remove and replace Defective Work as required by OPT;

B. Owner may:

1. Exclude Contractor from the Site;

2. Take possession of the Work and suspend Contractor's services related to the Work; and

3. Incorporate stored materials and equipment in the Work.

C. Allow OPT access to the Site and off-site storage areas to enable Owner to exercise the rights and remedies under this paragraph.

D. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 are to be charged against Contractor as a Set-off against payments due under Article 15. These claims, costs, losses, and damages include costs of repair and the cost of replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's Defective Work.

E. Contractor is not allowed an extension of the Contract Times because of delays in the performance of the Work attributable to the exercise of the Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; FINAL COMPLETION

15.01 Progress Payments

A. Progress payments are to be submitted to Construction Manager on the Application for Payment form provided by Construction Manager following procedures in the Contract Documents.

1. Progress payments for lump sum Work are to be paid based on the earned value to date at the amounts shown in the Schedule of Values submitted as required by Paragraph 2.03. Final payment will be for the total lump sum amount.

2. Progress payments for Unit Price Work are based on the number of units completed as determined under the provisions of Paragraph 13.03.

3. Progress payments for Work to be paid based on the Cost of the Work per Paragraphs 13.01, 13.02 and 13.04 are to be paid for Work completed by Contractor during the pay period.

B. Reduction in Payment by Owner:

1. Owner is entitled to impose a Set-off against payment based on the following:

a. Claims made against Owner or costs, losses, or damages incurred by Owner related to:

1) Contractor's conduct in the performance of the Work, including workplace injuries, non-compliance with Laws and Regulations, or patent infringement; or

2) Contractor's failure to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site, including workplace injuries, property damage, and non-compliance with Laws and Regulations.

b. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

c. Work is Defective, or completed Work has been damaged by Contractor's Team, requiring correction or replacement;

d. Owner has been required to correct Defective Work or complete Work in accordance with Paragraph 14.07;

e. The Contract Price has been reduced by Change Orders;

f. Events have occurred that would constitute a default by Contractor justifying a termination for cause;

g. Liquidated or other damages have accrued because of Contractor's failure to achieve Milestones, Substantial Completion, or completion of the Work;

h. Liens have been filed regarding the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of these Liens;

i. Owner has been notified of failure to make payments to Subcontractors, Suppliers, or Employees;

j. Failure to submit up-to-date record documents as required by the Contract Documents;

k. Failure to submit monthly Progress Schedule updates or revised schedules as requested by Construction Manager;

l. Failure to provide Project photographs required by the Contract Documents;

m. Failure to provide Certified Payroll required by the Contract Documents;

n. Compensation for OPT for overtime charges of Construction Manager, third review of Shop Drawings, review of substitutions, re-inspection fees, inspections or designs related to correction of Defective Work, or other services identified as requiring payment by Contractor;

o. Costs for tests performed by Owner to verify that Work previously tested and found to be Defective has been corrected;

p. OPT has actual knowledge of the occurrence of events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents with associated cost impacts;

q. Payment would result in an over-payment of the Contract Price; or

r. Other items entitling Owner to a Set-off against the amount recommended.

2. Compensation for services of OPT staff is to be at the rates established in the Supplementary Conditions.

3. Construction Manager is to notify Contractor stating the amount and the reasons for an imposed Set-off. Owner is to pay Contractor amounts remaining after deduction of the Set-off. Owner is to pay the Set-off amount agreed to by Owner and Contractor if Contractor remedies the reasons for the Set-off. Contractor may submit a Change Proposal contesting the Set-off.

C. No payment will be made for Work authorized by a Work Change Directive until the Work Change Directive is incorporated into a Change Order, unless arrangements or interim payments have been included in the Work Change Directive. Payment can be included in an Application for Payment when the Change Order is approved.

D. Owner is to pay the amount of payment recommended by Construction Manager within 30 days after receipt of the Application for Payment and accompanying documentation from Construction Manager.

E. Contractor certifies that all Work, including materials, covered by each Application for Payment have been completed or delivered and stored in accordance with the Contract Documents, that all amounts have been paid for Work, materials, and equipment for which previous payment has been made by Owner, and that the current payment amount shown in this Application for Payment is due.

15.02 Contractor's Warranty of Title

A. Contractor warrants and guarantees that title to the Work, materials, and equipment furnished under the Contract is to pass to Owner free and clear of Liens, title defects, and patent, licensing, copyright, or royalty obligations no later than 7 days after the time of payment by Owner of the Application for Payment which includes these items.

15.03 Substantial Completion

A. Notify Construction Manager when the Work or portion of the Work to be accepted under Paragraph 15.04 is substantially complete and request a Certificate of Substantial Completion.

B. OPT is to inspect the Work after Contractor's notification to determine if the Work is substantially complete. Construction Manager is to either issue the Certificate of Substantial Completion which sets the date of Substantial Completion or notify Contractor of the reasons the Project is not considered to be substantially complete.

C. The OPT and Contractor are to meet to discuss Owner's use or occupancy of the Work following Substantial Completion. Items to be discussed at this meeting include:

1. Review of insurance policies with respect to the end of the Contractor's coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner;

2. Owner's assumption of responsibility for security, operation, protection of the Work, maintenance, and utilities upon Owner's use or occupancy of the Work;

3. Contractor's obligations for operations and maintenance during performance and acceptance testing;

4. Contractor's access to the Site to complete punch list items; and

5. Procedures for correction of Defective Work during the one-year correction period.

15.04 Partial Utilization

A. Owner may use or occupy substantially completed parts of the Work which are specifically identified in the Contract Documents, or which OPT and Contractor agree constitutes a separately functioning and usable part of the Work prior to Substantial Completion of the Work. Owner must be able to use that part of the Work for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. Contractor and OPT are to follow the procedures of Paragraph 15.03 for this part of the Work.

B. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Article 6.

15.05 Final Inspection

A. OPT is to make a final inspection upon notice from Contractor that the entire Work or portion to be accepted under Paragraph 15.04 is complete. Construction Manager is to notify Contractor of Work determined to be incomplete or Defective. Immediately take corrective measures to complete the Work and correct Defective Work.

B. Notify Construction Manager when the entire Project and ready for Final Payment under Paragraph 15.06 and request a Certificate of Final Completion.

C. OPT is to inspect the Work after Contractor's notification to determine if the Project is complete. Construction Manager is to either issue the Certificate of Final Completion which sets the date of Final Completion or notify Contractor of the reasons the Project is not considered to be complete.

15.06 Final Payment

A. Make application for final payment after completing required corrections identified during the final inspection and delivering items and documents required by the Contract Documents. Provide the following with the final Application for Payment:

1. Consent of Surety to Final Payment acknowledging unsettled disputes; or

2. Affidavit of Payment of Debts and Claims or Affidavit of Release of Liens or furnish receipts or releases from Subcontractors and Suppliers when a payment bond is not required.

B. Construction Manager is to either recommend payment of the final Application for Payment to Owner if OPT is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled or notify Contractor of OPT's reasons for not recommending final payment.

C. The Work is complete, subject to surviving obligations, when it is ready for final payment as established by the Construction Manager's recommendation of payment of the final Application for Payment to Owner and the issuance of a Certificate of Final Completion.

D. Owner is to pay the amount of final payment recommended by Construction Manager within 30 days after receipt of the final Application for Payment and accompanying documentation from Construction Manager; unless additional time is required for approval of a governing board or entity. Payment will be within 30 days of approval by the governing board or entity.

15.07 Waiver of Claims

A. The making of final payment does not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from:

1. Unsettled Liens or claims for non-payment;

2. Defective Work appearing after final inspection pursuant to Paragraph 15.05;

3. Contractor's failure to comply with the terms of special guarantees specified in the Contract Documents;

4. Outstanding Claims or express reservation of rights by Owner; or

5. Contractor's continuing obligations under the Contract Documents.

B. Contractor waives claims and rights against Owner by accepting final payment except for those Claims made in accordance with the provisions of Article 17 and specifically noted in the Certificate of Final Completion.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 Owner May Suspend Work

A. Owner may suspend the Work or a portion of the Work for a period of not more than 90 consecutive days, at any time and without cause, by notice to Contractor. This notice fixes the date on which Contractor is to resume Work. Contractor is entitled to adjustments in the Contract Price and Contract Times directly attributable to this suspension. Submit a Change Proposal seeking an adjustment no later than 30 days after the date fixed for resumption of Work.

16.02 Owner May Terminate for Cause

A. The occurrence of one or more of the following events constitutes a default by Contractor and justifies termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents, including failure to supply sufficient skilled workers or suitable materials or equipment;
2. Failure to adhere to the Progress Schedule;
3. Failure of Contractor to provide a satisfactory replacement bond or insurance in the event either is lost or canceled;
4. Failure of Contractor to maintain financial solvency to adequately complete the Project as indicated by one or more of the following:
    a. A petition of bankruptcy is filed by or against Contractor,
    b. Contractor is adjudged as bankrupt or insolvent,
    c. Contractor or surety makes a general assignment for the benefit of creditors,
    d. A receiver is appointed for the benefit of Contractor's creditors, or
    e. A receiver is appointed because Contractor's insolvency;
5. Contractor's disregard of Laws or Regulations of public bodies having jurisdiction; or
6. Contractor's repeated disregard of the authority of OPT.

B. Contractor and surety must provide adequate assurance of future performance in accordance with the Contract Documents that is satisfactory to Owner if Contractor is believed to be in financial distress due to the existence of one or more of the indicators listed in Paragraph 16.02.A.4. Owner may terminate this Contract if Contractor and surety fail to provide adequate documentation satisfactory to Owner within 10 days of Construction Manager's request for this information.

C. Owner may declare Contractor to be in default, give notice to Contractor and surety that the Contract is terminated, and enforce the rights available to Owner under the performance bond after giving Contractor and surety 10 days' notice that one or more of the events identified in Paragraph 16.02.A has occurred.

D. Owner may exclude Contractor from the Site, take possession of the Work, incorporate the materials and equipment stored and complete the Work as Owner may deem expedient if Owner has terminated the Contract for cause.

E. Owner may elect not to proceed with termination of the Contract under this Paragraph 16.02 if Contractor begins to cure the cause for termination within 7 days of receipt of notice of intent to terminate.

F. Contractor is not entitled to receive further payments until the Work is completed if Owner proceeds as provided in this Paragraph 16.02. The amount of the Contract Price remaining is to be paid to Contractor if the unpaid balance exceeds the cost to complete the Work. This cost to complete the Work may include related claims, costs, losses, damages, and the fees and charges of engineers, architects, attorneys, and other professionals retained by Owner. Pay the difference to Owner if the cost to complete the Work including related claims, costs, losses, and damages exceeds the unpaid balance of the Contract Price. Claims, costs, losses, and damages incurred by Owner are to be reviewed as to their reasonableness and incorporated in a Change Order by Construction Manager. Owner is not required to obtain the lowest price for the Work performed when exercising its rights or remedies under this paragraph.

G. Termination does not affect the rights or remedies of Owner against Contractor or against surety under the payment bond or performance bond. Owner does not release Contractor from liability by paying or retaining money due Contractor.

16.03 Owner May Terminate for Convenience

A. Owner may terminate the Contract without cause after giving 7 days' notice to Contractor of the effective date of termination. Contractor is to be paid for the following if Owner terminates for convenience:

1. Work completed in accordance with the Contract Documents prior to the effective date of termination;

2. Actual costs sustained prior to the effective date of termination for Work in progress, plus a fair and reasonable amount for overhead and profit; fee calculated in accordance with Paragraph 11.04.D; and

3. Reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

B. Contractor will not be paid for loss of anticipated profits or revenue, post termination overhead costs, or other economic loss arising out of or resulting from this termination.

16.04 Contractor May Stop Work or Terminate

A. Contractor may terminate the Contract and issue a Change Proposal requesting payment from Owner on the same terms as provided in Paragraph 16.03 after 10 days' notice to Construction Manager provided that, through no act or fault of Contractor:

1. The Work is suspended for more than 90 consecutive days by Owner;

2. Construction Manager fails to act on an Application for Payment within 30 days after it is submitted; or

3. Owner fails to pay Contractor sums determined to be due, other than the final payment, within 30 days after payment is recommended by Construction Manager; and

4. OPT does not remedy this suspension or failure within 10 days after receipt of the notice.

B. Contractor may stop Work, without prejudice to other rights or remedies in lieu of terminating the Contract if Construction Manager has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed to pay Contractor within 30 days after payment is recommended by Construction Manager. The provisions of this Paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times for damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 Methods and Procedures

A. The Owner or Contractor may appeal a Claim, approved or denied in part or in full, by:

1. Electing to invoke the dispute resolution process if one is provided for in the Supplementary Conditions;

2. Agreeing with the other party to submit the dispute to a dispute resolution process; or

3. Notifying the other party of the intent to submit the dispute to a court of competent jurisdiction if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to.

ARTICLE 18 – MISCELLANEOUS

18.01 Computation of Times

A. Exclude the first day and include the last day when determining dates for a period referred to in the Contract Documents by days. The last day of this period is to be omitted from the determination if it falls on a Saturday, Sunday, or a legal holiday.

B. All references and conditions for a calendar day contract in the Contract Documents apply for a Fixed Date Contract. A fixed date contract is one in which the calendar dates for reaching Substantial Completion and/or Final Completion are specified in lieu of identifying the number of calendar days involved.

18.02 Independent Contractor

A. Contractor is to perform its duties under this Contract as an independent contractor. Contractor's Team and their personnel are not considered to be employees or agents of Owner. Nothing in this Agreement is to be interpreted as granting Contractor's Team the right or authority to make commitments for Owner. This Agreement does not constitute or create a joint venture, partnership, or formal business organization of any kind.

18.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available to the Owner or Contractor by these General Conditions are in addition to, and are not a limitation of, the rights and remedies which are otherwise imposed or available by:

1. Laws or Regulations;

2. Special warranties or guarantees; or

3. Other provisions of the Contract Documents.

B. The provisions of this Paragraph are as effective as if repeated specifically in the Contract Documents regarding each duty, obligation, right, and remedy to which they apply.

18.04 Limitation of Damages

A. Owner's Indemnitees are not liable to Contractor for claims, costs, losses, or damages sustained by Contractor's Team associated with other projects or anticipated projects.

18.05 No Waiver

A. The failure of Owner or Contractor to enforce any provision of this Contract does not constitute a waiver of that provision, affect the enforceability of that provision, or the enforceability of the remainder of this Contract.

18.06 Severability

A. If a court of competent jurisdiction renders a part of this Contract invalid or unenforceable, that part is to be severed and the remainder of this Contract continues in full force.

18.07 Survival of Obligations

A. Representations, indemnifications, warranties, guarantees, and continuing obligations required by the Contract Documents survive completion and acceptance of the Work or termination of the Contract.

18.08 No Third-Party Beneficiaries

A. Nothing in this Contract can be construed to create rights in any entity other than the Owner and Contractor. Neither the Owner nor Contractor intends to create third party beneficiaries by entering into this Contract.

18.09 Successors and Assigns

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

18.10 Assignment of Contract

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights or interests in the Contract will be binding on the other party without

the written consent of the other party. Money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.11 No Waiver of Sovereign Immunity

A. Owner has not waived its sovereign immunity by entering into and performing its obligations under this Contract.

18.12 Controlling Law

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

B. Venue for legal proceedings lies exclusively in the county in which the Owner's home office is located unless specified elsewhere in the Contract Documents.

END OF SECTION

00 73 00 SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement Section 00 72 00 “General Conditions.” The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below.

The paragraph numbers used in the Supplementary Conditions correspond to the General Condition paragraphs they modify with the prefix "SC" added—for example, “Paragraph SC-4.05.” modifies General Conditions Paragraph 4.05.

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

SC-1.01 Defined Terms

A. The Owner’s Project Team as defined in the Paragraph 1.01.A.45 of the General Conditions consists of the following organizations:

1. Laguna Madre Water District
   105 Port Road
   Port Isabel, Texas 78578

2. Freese and Nichols, Inc.
   Attn: Risk Management
   4055 International Plaza
   Fort Worth, Texas 76109

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.03 Subsurface and Physical Conditions

A. This Supplementary Condition identifies the reports and drawings referenced in Paragraph 5.03 of the General Conditions related to subsurface and physical conditions.

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

Report Title	Report Date	Technical Data
Geotechnical Engineering Report – Proposed LMWD Utility Improvements	August 2, 2019	Geotechnical Bore and Subsurface Conditions at Lift Station No. 17 and Lift Station No. 11 Force Main
Geotechnical Engineering Report – Proposed LMWD Force Main and Gravity Main Improvements	April 15, 2020	Geotechnical Bore and Subsurface Conditions at Lift Station No. 17 Force Main, Lift Station No. 25 Force Main, Lisft Station No. 30 proposed gravity main, and SH-100 proposed gravity main.

Report Title	Report Date	Technical Data
Geotechnical Engineering Report – Proposed LMWD Lift Station No. 4 Improvements	April 15, 2021	Geotechnical Bore and Subsurface Conditions at Lift Station No. 4

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

Drawing Title	Drawing Date	Technical Data
Laguna Madre Water District Laguna Vista Wastewater Treatment Plant and Sewer Improvements	September 2004	Lift Station No. 2 As-Builts
Lift Station #11 Rehabilitation	August 2011	Lift Station No. 11 As-Builts
Laguna Madre Water District Port Isabel Collection System Improvements	October 2001	Lift Station No. 25 and Upstream Gravity System As-Builts
Port Isabel Wastewater Treatment Facility Modifications Volume 4 of 5	February 2019	Port Isabel WWTP As-Builts

3. Copies of reports and drawings may be downloaded from the procurement website.

SC-5.06 Hazardous Environmental Conditions at Site

A. This Supplementary Condition identifies the reports and drawings referenced in Paragraph 5.06 of the General Conditions related to Hazardous Environmental Conditions at the Site.

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

Report Title	Report Date	Technical Data
None		

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

Drawing Title	Drawing Date	Technical Data
None		

3. Copies of reports and drawings may be downloaded from the procurement website.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

SC-13.01 Cost of the Work

A. Supplement Paragraph 13.01.C.4.d.1) by adding the following sentence:

"The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition of the "Equipment Watch Cost Recovery Rental Rate Blue Book."

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; FINAL COMPLETION

SC-15.01 Progress Payments

A. Compensation for services of OPT staff as specified in Paragraph 15.01 will be at the following rates:

Position	Hourly Rate
Principal in Charge	$225
Project Manager	$197
Project Engineer	$130
Construction Manager	$130
Resident Engineer	$130
Project Construction Manager	$130
Design Engineer	$130
Engineering Technician	$145
Clerk	$105

B. Expenses will be billed at the actual cost multiplied by 1.15.

SC-15.03 Substantial Completion

Substantial completion is identified as both lift stations having all piping, valves, pumps, wet well repairs, electrical and instrumentation installed and operational with all safety features and testing completed, so that the lift stations are fully functional and do not have to be taken out of service or have reduced capacity for the remaining duration of the project.

END OF SECTION

00 73 16 INSURANCE REQUIREMENTS

ARTICLE 1 – GENERAL PROVISIONS

1.01 CONTRACTOR'S INSURANCE

A. Obtain and maintain insurance that complies with this Section with coverage amounts equal to or greater than the amounts specified in Article 2 or greater where required by Laws and Regulations.

B. Coverage is to remain in effect at least until the Work is complete and longer if expressly required elsewhere in this Contract, and when Contractor may be correcting, removing, or replacing Defective Work as a warranty or correction obligation, or returning to the Site to conduct other tasks arising from the Contract.

C. Coverage is to apply with respect to the performance of the Work, whether performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

D. Obtain insurance from companies that are duly licensed or authorized in the state in which the Project is constructed to issue insurance policies for the required limits and coverages and that have an A.M. Best rating of A-VIII or better.

E. Alternative forms of insurance coverage, including self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not acceptable to meet the insurance requirements of this Contract.

F. Owner will not purchase or maintain insurance to protect the interest of the Contractor, Subcontractors, or others in the Work. Owner does not represent that the insurance coverage and limits established in this Contract are adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary and including the cost of this insurance in the offered Contract Price.

G. Contractor is fully responsible for all losses arising out of, resulting from or connected with operations under this Contract whether or not these losses are covered by insurance. The acceptance of evidence of insurance by the OPT, or others listed as an additional insured, that does not comply with the Contract requirements does not release the Contractor from the requirement to comply with Contract requirements.

H. The required insurance and insurance limits do not limit the Contractor's liability under the indemnities granted to Owner's Indemnitees in the Contract Documents.

I. Do not perform any Work on the Project unless the required insurance policies are in effect. Owner may exclude the Contractor from the Site and exercise Owner's termination rights under the General Conditions if Contractor fails to obtain or maintain the required insurance.

J. Policies must provide notice before cancellation, non-renewal or any material change in the policy's terms and conditions as described in Paragraph 1.04.D. Contractor is to notify Owner and the additional insured of any notice received within 3 days of receipt of a notice

by Contractor. Contractor is to cease all Work covered by cancelled or non-renewed insurance if suitable coverage is not in place in time to prevent a lapse in coverage. Contractor is solely responsible for any delays associated with lapsed coverage.

K. Owner may elect, but is in no way obligated, to obtain equivalent insurance to protect Owner's interests without prejudice to any other right or remedy if the Contractor fails to obtain or maintain the required insurance. Owner may impose a reasonable set-off against payments to recover the cost of the insurance.

L. Owner's policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's policies to meet any of Contractor's obligations to the Owner, Design Professional, or third parties.

1.02 SUBCONTRACTOR OR SUPPLIER INSURANCE

A. Require Subcontractors to purchase and maintain workers' compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project. Include OPT as additional insureds on Subcontractor's policies in accordance with Paragraph 1.03.

B. Require Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

C. Contractor is liable for all losses that would have been covered by Subcontractor or Supplier insurance if Subcontractor or Supplier fails to provide coverage.

1.03 ADDITIONAL INSURED

A. The following are to be named as an additional insured on all insurance policies, except workers' compensation insurance, builder's risk insurance, and the Contractor's professional liability insurance:

1. Freese and Nichols, Inc.
   Attn: Risk Management
   4055 International Plaza
   Fort Worth, Texas 76109

2. Square E Engineering, LLC
   Attn: Juan-Pablo Cantu
   32238 Whipple Road
   Los Fresnos, Texas 78566

B. All insurance related notices are to be sent to the addresses listed above.

C. Notify the Owner and additional insured if the Contractor fails to purchase or maintain the insurance required by the Contract Documents.

D. All insurance policies must include a waiver of subrogation in favor of each additional insured.

E. Provide for an endorsement that the "other insurance" clause will not apply to the OPT where the OPT is an additional insured. Contractor's insurance is primary and non-contributory with respect to any insurance or self-insurance carried by the OPT for liability arising out of operations under this Contract.

1.04 EVIDENCE OF INSURANCE

A. Deliver evidence of insurance, in accordance with this Section, to the Owner with the signed Contract Documents to demonstrate that Contractor has obtained the policies, coverages, and endorsements required by the Contract.

1. Continue to provide evidence Contractor is maintaining the required insurance for the duration of the Contract Times and such extended periods as required by the Contract Documents.

2. Provide this evidence of insurance to Owner and each additional insured.

3. Contractor may block out (redact) any confidential premium or pricing information and wording specific to a project or jurisdiction in any policy or endorsement furnished under this paragraph not applicable to this Contract.

B. OPT's failure to demand evidence of insurance or verify the Contractor's full compliance with insurance requirements or failure to identify a deficiency in compliance from the evidence provided is not a waiver of the Contractor's obligation to obtain and maintain the insurance required by the Contract Documents.

C. Provide evidence of insurance acceptable to the Owner with the executed Contract Documents. Provide the following as evidence of insurance:

1. Copy of insurance policies;

2. Certificates of insurance on an acceptable form;

3. Full disclosure of exclusions;

4. Declaration pages, riders, or endorsements to policies;

5. Documentation of deductibles;

6. List of named and additional insureds for each policy; and

7. Evidence that waivers of subrogation are provided on applicable policies.

D. Provide evidence of a requirement in the policy that at least 10 days' notice will be given before cancellation, non-renewal or any material change in the policy's terms and conditions including:

1. Type of coverage provided;

2. Riders or endorsements to policies;

3. Policy limits of coverage;

4. Change in deductible amount;

5. Status of named or additional insured; or

6. Waivers of subrogation.

E. Certificates of Insurance:

1. Submit certificates of insurance meeting the applicable requirements of the applicable state department of insurance. No requirement of this Contract may be interpreted as requiring the issuance of a certificate of insurance on a form that has not first been filed with and/or approved by the applicable state department of insurance.

2. Include the name of the Project in the description of operations box on the certificate of insurance, and the name of each additional insured.

F. Continuing Evidence of Coverage:

1. Provide updated, revised, or new evidence of insurance prior to the expiration of existing policies. A certificate of insurance is acceptable as evidence of renewal of insurance policies, provided no changes are made in the policy originally provided with signed Contract Documents.

2. Provide evidence of continuation of insurance coverage at final payment and for the following 3 years.

ARTICLE 2 – INSURANCE COVERAGE AMOUNTS AND POLICY REQUIREMENTS

2.01 CONTRACTOR'S INSURANCE

A. Workers' Compensation and Employer's Liability Insurance:

1. Purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation, including off-site operations.

2. Provide the following coverage with not less than the minimum limits indicated:

Workers' Compensation and Related Insurance	Policy Limits
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshore)	Statutory
Foreign Voluntary Workers' Compensation (Employer's Responsibility Coverage), if Applicable	Statutory
Employers' Liability	
Bodily Injury by Accident – Each Accident	$1,000,000
Bodily Injury by Accident – Aggregate	$2,000,000
Bodily Injury by Disease – Each Occurrence	$1,000,000
Bodily Injury by Disease – Aggregate	$2,000,000

B. Commercial General Liability

1. Purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:

a. Damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

b. Damages insured by reasonably available personal injury liability coverage; and

c. Damages because of injury to or destruction of tangible property wherever located, including loss of use resulting from the damage.

2. Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form).

a. Provide additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). Equivalent endorsements may be used if Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available.

b. Provide ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for Design Professional additional insured.

3. Provide the following coverages and endorsements:

   a. Products and completed operations coverage.

      1) Maintain coverage for 3 years after final payment.

      2) Provide Owner and each other additional insured evidence of continuation of such insurance at final payment and for 3 years thereafter.

   b. Blanket contractual liability coverage, including coverage of Contractor's contractual indemnity obligations in the General Conditions.

   c. Severability of interests and no insured-versus-insured or cross-liability exclusions.

   d. Underground, explosion, and collapse coverage.

   e. Personal injury coverage.

4. The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:

   a. Modifications of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).

   b. Exclusion for water intrusion or water damage.

   c. Provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.

   d. Exclusion of coverage relating to earth subsidence or movement.

   e. Exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than workers' compensation).

   f. Limitations or exclusions based on the nature of Contractor's work.

   g. Professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

5. Provide the following coverage with not less than the minimum limits indicated:

Commercial General Liability Insurance	Policy Limits
General Aggregate	$2,000,000
Products - Completed Operations	$1,000,000
Personal and Advertising Injury (Limit Per Person)	$2,000,000
Bodily Injury and Property Damage – Each Occurrence	$1,000,000

C. Automobile Liability:

1. Purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis. Coverage can be provided through individual limits for bodily injury and for property damage or a combined single limit covering both bodily injury and property damage.

2. Provide the following coverage with not less than the minimum limits indicated:

Automobile Liability Insurance	Policy Limits
Bodily Injury	
Each Person	$1,000,000
Each Accident	$1,000,000
Property Damage	
Each Accident	$1,000,000
Combined Single Limit	
Combined Single Limit for Bodily Injury and Property Damage	$3,000,000

D. Umbrella or Excess Liability:

1. Purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs A through C above. The coverage afforded must be at least as broad as that of each underlying policy.

2. Provide the following coverage with not less than the minimum limits indicated:

Umbrella or Excess Liability Insurance	Policy Limits
Each Occurrence	$4,000,000
General Aggregate	$4,000,000

E. Contractor's Professional Liability Insurance:

1. Purchase and maintain applicable professional liability insurance if Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of 2 years after Substantial Completion. The policy must pre-date the commencement of furnishing services on the Project.

2. Provide the following coverage with not less than the minimum limits indicated:

Contractor's Professional Liability Insurance	Policy Limits
Each Claim	$1,000,000
Annual Aggregate	$2,000,000

2.02 BUILDER'S RISK INSURANCE

A. Purchase and maintain builder's risk insurance on a completed value basis in the amount of the Work's full insurable replacement cost.

1. The builder's risk insurance must be written on a builder's risk "all risk" policy form that, at a minimum, includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).

    a. Policy must include coverage for losses from physical damage or loss with respect to defective workmanship, methods, design, or materials.

    b. Provide other insurance policies acceptable to Owner if insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise.

2. The builder's risk insurance must cover, as insured property, at least the following:

    a. Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property;

    b. Spare parts inventory required by the Contract; and

    c. Temporary works which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures but are not intended to form part of the permanent constructed Work.

3. The builder's risk insurance must be maintained in effect until the Work is complete, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.

4. The builder's risk insurance must:

    a. Cover expenses incurred in the repair or replacement of any insured property (including fees and charges of contractors, engineers, and architects).

    b. Allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.

    c. Allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.

    d. Include performance/hot testing and startup, if applicable.

5. The builder's risk insurance must include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy.

B. The builder's risk policy will include, for the benefit of Owner, loss of revenue and soft cost coverage for losses arising from delays in completion that result from covered physical losses or damage. Such coverage will include, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, compensation for loss of net revenues, rental costs, and attorneys' fees and engineering or other consultants' fees, if not otherwise covered.

2.03 OWNER'S LIABILITY INSURANCE

A. Contractor is required to provide Owner's Protective Liability Insurance coverage for at least the following amounts, unless greater amounts are required by Laws and Regulations.

Owner's Liability Insurance	
General Aggregate	$2,000,000
Each Occurrence (Bodily Injury and Property Damage)	$1,000,000

END OF SECTION

00 73 17 TEXAS WORKERS' COMPENSATION INSURANCE

ARTICLE 1 – REQUIRED NOTICE

1.01 Workers' Compensation Insurance Coverage

A. Definitions:

1. Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form 81, DWC Form 82, DWC Form 83, or DWC Form 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.

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

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

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

C. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

2. no later than 7 days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

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

2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

4. obtain from each other person with whom it contracts, and provide to the contractor:

    a. a certificate of coverage, prior to the other person beginning work on the project; and

    b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

7. contractually require each person with whom it contracts, to perform as required by paragraphs 1-7, with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity 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

division. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

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

END OF SECTION

00 73 43 WAGE RATE REQUIREMENTS

ARTICLE 1 – PAYMENT OF PREVAILING WAGE RATES

1.01 Contractor and Subcontractors employed on this Project must pay not less than the rates established by the Owner as required by Tex. Gov't Code Chapter 2258.

1.02 The minimum wage rates for various labor classifications as established by the Owner are included in Section 00 73 46 "Wage Determination Schedule."

ARTICLE 2 – PENALTY

2.01 In accordance with Section 2258.023(b), any Contractor or Subcontractor who violates the requirements of Chapter 2258 shall pay the Owner $60 for each worker employed or each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract.

2.02 Failure to comply with the requirements of Chapter 2258 may subject the Owner, Contractor, or Subcontractor(s) to additional civil and criminal penalties.

ARTICLE 3 – RECORDS

3.01 In accordance with Section 2258.024, the Contractor and its Subcontractors, if any, shall keep a record showing:

A. The name and occupation of each worker employed by the Contractor or Subcontractor in the construction of the Work; and

B. The actual per diem wages paid to each worker.

3.02 This record shall be open at all reasonable hours to inspection by the officers and agents of the OPT.

ARTICLE 4 – ENFORCEMENT

4.01 Owner will enforce the provisions of this Contract related to the payment of prevailing wage rates as required by Chapter 2258, Subchapter C.

4.02 Owner may be required to withhold money forfeited or required to be withheld under Chapter 2258 from the payments to the Contractor. If required, these amounts will be withheld from payments to the Contractor through a Set-off in accordance with the General Conditions.

END OF SECTION

00 73 46 WAGE DETERMINATION SCHEDULE

"General Decision Number: TX20210003 01/01/2021

Superseded General Decision Number: TX20200003

State: Texas

Construction Types: Heavy and Highway

Counties: Cameron, Hidalgo and Webb Counties in Texas.

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021

* SUTX2011-003 08/02/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving & Structures)	$ 12.46	
FORM BUILDER/FORM SETTER (Structures)	$ 12.30	
FORM SETTER (Paving & Curb)	$ 12.16	
LABORER		
Asphalt Raker	$ 10.61	
Flagger	$ 9.10	
Laborer, Common	$ 9.86	
Laborer, Utility	$ 11.53	
Pipelayer	$ 11.87	
Work Zone Barricade Servicer	$ 12.88	
POWER EQUIPMENT OPERATOR:		
Asphalt Distributor	$ 13.48	
Asphalt Paving Machine	$ 12.25	
Broom or Sweeper	$ 10.33	
Crane, Lattice Boom 80 Tons or Less	$ 14.39	
Crawler Tractor	$ 16.63	
Excavator, 50,000 lbs or less	$ 12.56	
Excavator, over 50,000 lbs	$ 15.23	
Foundation Drill, Truck Mounted	$ 16.86	
Front End Loader Operator, Over 3 CY	$ 13.69	
Front End Loader, 3 CY or less	$ 13.49	
Loader/Backhoe	$ 12.77	
Mechanic	$ 15.47	
Milling Machine	$ 14.64	
Motor Grader Operator, Rough	$ 14.62	
Motor Grader, Fine Grade	$ 16.52	
Scraper	$ 11.07	
Servicer	$ 12.34	
Steel Worker (Reinforcing)	$ 14.07	
TRUCK DRIVER		
Lowboy-Float	$ 13.63	
Single Axle	$ 10.82	
Single or Tandem Axle Dump	$ 14.53	

Tandem Axle Tractor with
Semi Trailer.....$ 12.12

WELDER.....$ 14.02

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were

prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION
"

END OF SECTION

00 74 00 SPECIAL CONDITIONS FOR THE TWDB

ARTICLE 1 – FUNDING AGENCY REQUIREMENTS

1.01 This Project is funded in whole or in part by Texas Water Development Board (TWDB) (Funding Agency). The Funding Agency requires specific conditions and reporting as a condition for providing this funding. The conditions and reporting forms of the Funding Agency are included in the Contract Documents. The Funding Agency requirements govern in the event of any conflict between the Funding Agency requirements and any other provision of the Contract Documents.

1.02 The applicable Funding Agency conditions and reporting forms are included with these documents. Additional forms are referenced within these documents and will be provided by the Engineer or may be downloaded from the TWDB website:

Specification Section	Title	Funding Agency Document No.
00 74 01	Special Conditions for the Texas Water Development Board	(TWDB-0550)
00 74 02	Guidance on Davis-Bacon Wage Rate Requirements for State Revolving Fund Projects	(TWDB DB-0156)
00 74 03	American Iron and Steel (AIS) Guidance for Clean Water & Drinking Water State Revolving Fund Projects	(TWDB-1106)
00 74 04	Disadvantaged Business Enterprises for State Revolving Fund Projects	(TWDB-0210)
00 74 06	Site Certificate	(ED-101)

1.03 The Project will adhere to the following special environmental conditions provided in the project Categorical Exclusion dated November 20, 2018 and Statement of Findings dated July 23, 2021.

A. As per an agreement with the Texas Parks and Wildlife Department (TWDB project number 40592), to ensure compliance with Chapter 64 of the Texas Parks and Wildlife Code pertaining to state-protection of nongame birds, any necessary vegetation clearing associated with the installation of lift station no. 11 force main will be scheduled to occur outside of the March 15 through September 15 migratory bird nesting season.

B. In order to comply with the requirements of the Federal Emergency Management Agency regarding implementation of the National Flood Insurance Act, Flood Disaster Protection Act, National Flood Insurance Reform Act, Federal Executive Orders 11988 and 11990, and to comply with related state statutes, proponents of construction projects in special flood hazard areas must coordinate in advance with the local floodplain administrator and obtain a floodplain development permit prior to construction.

C. In order to comply with Park and Wildlife Code, as per an agreement with the Texas Parks and Wildlife Department, a sediment control fence will be installed in the trenched areas associated with the lift station no. 30 decommissioning project, to exclude wildlife from the trenched areas.

D. Consistent with Section 404 of the Clean Water Act, the proposed lift station no. 25 force main replacement and lift station no. 30 decommissioning projects must utilize boring techniques to avoid impacts to potential waters of the United States, including wetlands.

E. The Project activities must comply with the standard emergency discovery conditions for threatened and endangered specifies included in TWDB Form 0550 (Section 00 74 01).

F. The Project activities must comply with standard emergency discovery conditions for cultural resources included in TWDB Form 0550 (Section 00 74 01).

END OF SECTION

Texas Water Development Board Supplemental Contract Conditions for Clean Water State Revolving Fund (Equivalency) and Drinking Water State Revolving Fund

For Construction Services for Projects Funded through the CWSRF Equivalency and DWSRF Programs

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Forms and Guidance:

The Texas Water Development Board (TWDB) forms and guidance documents noted in this instruction document may be accessed through the TWDB Financial Assistance website at:

http://www.twdb.texas.gov/financial/instructions/index.asp

Search by either the document number or name.

I. INSTRUCTIONS FOR APPLICANTS

1. Applicability

These Supplemental Contract Conditions contain provisions that are worded to comply with certain statutes and regulations which specifically relate to all Drinking Water State Revolving Fund (DWSRF) projects and Clean Water State Revolving Fund (CWSRF) Equivalency Program projects. Provisions which are applicable to the project's funding source or dollar value of the contract are so noted within these provisions.

2. Use of Conditions

The conditions and forms listed under ***Section II:*** ***Instructions to Bidders*** are to be included in the instructions to bidders for construction services. The provisions listed under ***Section III:*** ***Construction Contract Supplemental Conditions*** shall be included, in their entirety, with the other general and special conditions that are typically included in the construction contract documents by the design engineer.

3. Modifications to Provisions

These provisions shall be included as a stand-alone section in the contract documents. The Applicant may need to modify parts of these provisions to better fit the other provisions of the construction contract. The Applicant and the consulting engineer should carefully study these provisions before incorporating them into the construction contract documents. In particular, Water Districts and other types of Districts should be aware of statutes relating to their creation and operation which may affect the application of these conditions. The TWDB Project Engineer/Reviewer should be consulted if the Applicant thinks there is a need to modify parts of these provisions.

The Applicant is to determine and incorporate the affirmative action goals for the project into Supplemental Contract Condition No. 12. Supplemental Condition No. 15, Archeological Discoveries and Cultural Resources, and Condition No. 16, Endangered Species, may be superseded or modified by project specific conditions established during the environmental review process.

These documents may confer certain duties and responsibilities on the consulting engineer that are beyond, or short of, what the Applicant intends to delegate. The Applicant should ensure that the contractual agreement with the Engineer provides for the appropriate services. Otherwise the Applicant should revise the wording in these special conditions to agree with actually delegated functions.

4. Good Business Practices

There are other contract provisions that the Applicant and Engineer need to include as a matter of good business practice. It is recommended that provisions addressing the following matters be included in the construction contract.

(a) Specifying the time frame for accomplishing the construction of the project, and the consequences of not completing on time, including liquidation damages.
(b) Specifying the type and dollar value of and documentation of insurance the Contractor is to carry. At a minimum, the Contractor should carry worker's compensation, liability and builder's risk insurance.
(c) Identifying the responsibility of the Contractor - responsibility and warranty of work.
(d) Price reduction for defective pricing of negotiated costs.
(e) Differing site conditions - notice and claims regarding site conditions differing from indicated conditions.
(f) Covenants against contingent fees - prohibit contingent fees for securing business.
(g) Gratuities - prohibitions against offering and accepting gratuities.
(h) Audit and access records.
(i) Suspension of work - conditions under which the Applicant may suspend work.
(j) Termination - conditions under which the Applicant may terminate.
(k) Remedies - how disputes will be remedied.

5. Other Requirements

There may be other local government requirements and applicable Federal and State statutes and regulations which are not included by these conditions. It is the Loan/Principal Forgiveness Applicant's responsibility to ensure that the project and all contract provisions are consistent with the relevant statutes and regulations.

6. Advertisements for Bids

State procurement statutes require advertising a contract for bid for at least two (2) consecutive weeks. By not following this requirement, the project may need to be re-advertised. The official advertisement for bids that is published in newspapers should include certain information such as, but not limited to, the following:

(a) A clear description of what is being procured.
(b) How to obtain plans and specifications (P&S), necessary forms and information.
(c) The date and time by which bids are to be submitted (deadline).
(d) The address where bids are to be provided.
(e) This contract is contingent upon release of funds from the Texas Water Development Board (TWDB).
(f) Any contract or contracts awarded under this Invitation for Bid (IFB), Request for Proposals (RFP), or Request for Qualifications (RFQ) are expected to be funded in part by financial assistance from the TWDB. Neither the U.S. Environmental Protection Agency (EPA) or the State of Texas, nor any of its departments, agencies, or employees, are or will be a party to this IFB, RFP, RFQ, or any resulting contract.
(g) For CWSRF, include – Any contract(s) awarded under this Invitation for Bids is/are subject to the American Iron and Steel (AIS) requirements of Section 608 of the Federal Water Pollution Control Act.
For DWSRF, include – Any contract(s) awarded under this Invitation for Bids is/are subject to the American Iron and Steel (AIS) requirements of federal law, including federal appropriation acts.

(h) This contract is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) businesses. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details of the DBE Program and the current, applicable fair share goals, please visit http://www.twdb.texas.gov/dbe.

(i) Equal Opportunity in Employment - All qualified Applicants will receive consideration for employment without regard to race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age (40 or older), disability, or genetic information. Bidders on this work will be required to comply with the Department of Labor regulations at 41 CFR Part 60-4, relating to Construction Contractors--Affirmative Action Requirements, which include the President's Executive Order No. 11246, as amended by Executive Order No. 11375 and Executive Order No. 13672, in the award and administration of contracts awarded under TWDB financial assistance agreements. Failure by the Contractor to carry out these requirements is a material breach, which may result in the termination of the awarded financial assistance.

(j) Acknowledgement of any special requirements such as mandatory pre-bid conference.

(k) Right to reject any and all bids.

(l) Davis-Bacon prevailing wage requirements apply to the construction, alteration or repair of treatment works carried out, in whole or in part, with assistance made available by the Clean Water State Revolving Fund (CWSRF) or a construction project financed, in whole or in part, from the Drinking Water State Revolving Fund (DWSRF).

(m) The Davis-Bacon prevailing wage requirements apply to Contractors and Subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration or repair (including painting) of a treatment works project under the CWSRF or a construction project under the DWSRF.

(n) For prime contracts in excess of $100,000, Contractors and Subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The Fair Labor Standards Act may also apply to Davis-Bacon covered contracts.

(o) Any contracts or subcontracts in excess of $2,000 must include the provisions of the Davis-Bacon Wage Rate Requirements found in TWDB Guidance No. DB-0156.

(p) Wage Determinations - U.S. Department of Labor (DOL) wage determination must be included in the bidding and contract documents. DOL wage determinations may be obtained online at http://www.wdol.gov/.
Once it is determined that Davis-Bacon wage rates will apply to a construction contract, the Applicant must state in the solicitation that Davis-Bacon prevailing wage rates are applicable and bid packages must include the current Davis-Bacon general wage determination for the area where construction will occur. While the solicitation remains open, the Applicant must monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current.

The Applicant must amend the solicitation if the DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Applicant may request a finding from TWDB that there is not reasonable time to notify interested Contractors of the modification of the wage determination.

(q) For additional information on Davis-Bacon Wage Rate Requirements and its applicability to this contract, please consult TWDB Guidance No. DB-0156.

7. Bid Proposal

The Bid proposal form should account for the following:

(a) If a lump sum bid, include a list of the materials used and associated costs.
(b) Distinguish Eligible and Ineligible items.
(c) Accommodate Trench Safety requirements with separate per unit pay item for trench excavation safety protection, Health and Safety Code Chapter 756, Subchapter C.
(d) Include space for the Contractor to acknowledge receipt of each Addendum issued during the bidding process.

8. Bidding Process

The Plans and Specifications, P&S, should include an explanation of how the bids will be processed and should include the following components:

(a) Whether a Pre-bid Conference will be held, whether it is optional or mandatory, where and when it will be held.
(b) Specify the criteria and process for determining responsiveness and responsibility of the bidder.
(c) Specify the method of determining the successful bidder and award (e.g., award to the lowest responsive, responsible bidder, accounting for any multiple parts to bids).
(d) Allow for withdrawal of a bid due to a material mistake.
(e) Identify the time frame that the bids may be held by the Applicant before awarding a contract (i.e., typically for 60 or 90 days).
(f) Acknowledge right of the Applicant to reject any and all bids.

9. Debarment and Suspension Certification

Financial assistant recipients must fully comply with the requirements of Subpart C of 2 CFR Part 180 – "*Responsibilities of Participants Regarding Transactions Doing Business with Other Persons"* - as implemented and supplemented by 2 CFR Part 1532. The recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 – *"Covered Transactions"* – includes a term or condition requiring compliance with Subpart C.

The recipient is fully responsible for requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions.

Recipient acknowledges that failing to disclose the information required under 2 CFR 180.355 may result in the delay or negation of the financial assistance, or pursuance of legal remedies including debarment and suspension.

The recipient must complete and submit certification No. ***SRF-404: Debarment / Suspension Certification***, certifying that it has checked the federal System for Award Management website (http://www.sam.gov) and determined that the Contractor is not an "excluded party" that is debarred, suspended or otherwise excluded from participation in federal assistance programs under Executive Order 12549, as required by 2 CFR Part 180 and 2 CFR Part 1532.

10. Release of Funds

Prior to the TWDB approval to issue a notice to proceed (NTP), and subsequent release of funds for construction (according to program specific requirements), the Applicant and its consultant shall provide the following bid documents:

(a) Submittal of Bid Documents to TWDB Project Engineer/Reviewer to allow contingent award of contract:

Advertisement and Affidavit of advertisement,
Bid tabulation,
All Addenda submitted and approved for the contract,
Bid proposal of apparent low bidder (or chosen bidder with explanation) with bid bond,
Entity's Disadvantaged Business Enterprise forms TWDB 0216 and TWDB 373,
Contractor's Disadvantaged Business Enterprise forms TWDB 0216, 0217, and 0373
Site Certificate (ED-101),
Consulting engineer's recommendation to award letter,
A description of any bidding irregularities,
Construction inspection proposal,
Bidder's Certifications Form (WRD-255).

(b) Following contingent award of the contract, TWDB Project Engineer/Reviewer should receive a bound copy of the executed contract documents (including specifications). This document should include:

Executed agreement,
Contractor's Act of Assurance (TWDB Form ED -103),
Contractor's Act of Assurance Resolution (TWDB Form ED-104),
Payment and Performance Bonds (must be executed on or after the date of the contract),
Contractor's Certificate of Insurance,
Sufficiency of Funds letter.

After reviewing and approving the executed bid documents, the TWDB will issue an authorization for the Applicant to issue a notice to proceed. At this time, TWDB staff can begin releasing construction funds in accordance with program requirements.

Once construction begins, the Applicant must submit monthly, with each Outlay Request, the following documents:

- DB-0154 – Monthly Davis Bacon Wage Rate Certificate of Compliance.
- TWDB-1106-A – Monthly American Iron and Steel Certificate.

Failure to provide these certificates will result in denial of release of funds.

For any questions or proposed modifications to these conditions, please contact your TWDB Project Engineer/Reviewer.

II. INSTRUCTIONS TO BIDDERS

The language and conditions listed in this Section shall be included in the "Instructions to Bidders" section of the construction contract documents.

1. Contingent Award of Contract

This contract is contingent upon release of funds from the Texas Water Development Board. Any contract(s) awarded under this Invitation for Bids is/are expected to be funded in part by a loan or loan with principal forgiveness from the Texas Water Development Board and a grant from the United States Environmental Protection Agency, U.S. EPA. Neither the State of Texas, the U.S. EPA, nor any of its departments, agencies, or employees, are or will be a party to this Invitation for Bids or any resulting contract.

2. Disadvantaged Business Enterprise Goals

The Texas Water Development Board's (TWDB) Clean Water and Drinking Water State Revolving Fund programs receive federal funds from the U. S. Environmental Protection Agency (EPA). As a condition of federal grant awards, EPA regulations require that loan recipients make a "**good faith effort**" to award a fair share of work to Disadvantaged Business Enterprises (DBE) who are Minority Business Enterprises (MBE's), and Women-owned Business Enterprises (WBE's) whenever procuring construction, supplies, services and equipment. More information on DBE requirements is available in the Supplemental Contract Conditions section of this guidance No. ***14***. ***Disadvantaged Business Enterprises***.

The current fair share goals for the State of Texas are as follows:

CATEGORY	MBE	WBE
Construction	19.44%	9.17%
Equipment	16.28%	11.45%
Services	20.41%	13.66%
Supplies	25.34%	8.82%

3. Davis-Bacon Wage Rate Requirements

(a) Davis-Bacon prevailing wage requirements apply to the construction, alteration or repair of treatment works carried out, in whole or in part, with assistance made available by the Clean Water State Revolving Fund (CWSRF) or a construction project financed, in whole or in part, from the Drinking Water State Revolving Fund (DWSRF).

(b) The Davis-Bacon prevailing wage requirements apply to Contractors and Subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration or repair (including painting) of a treatment works project under the CWSRF or a construction project under the DWSRF.

(c) For prime contracts in excess of $100,000, Contractors and Subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek.
The Fair Labor Standards Act may also apply to Davis-Bacon covered contracts.

(d) Any contracts in excess of $2,000 must include the provisions of the Davis-Bacon Wage Rate Requirements. If the Owner (sub-recipient) is a governmental entity such as a city or district, it must insert in full the contract clauses found in TWDB Guidance DB-0156, Appendix 1: Section 3, Section 4 if the contract exceeds $100,000, and Section 5. If the Owner (sub-recipient) is a non-governmental entity such as a water supply corporation or a private company, it must insert in full the contract clauses found in TWDB Guidance DB-0156, Appendix 2: Section 3, Section 4 if the contract exceeds $100,000, and Section 5. The Owner (sub-recipient) must ensure all prime contracts require the same full text in any subcontracts. See TWDB Guidance DB-0156 for the text of the contract language that must be included.

Additional information on Davis-Bacon Wage Rate Requirements and its applicability to this contract can be found in TWDB Guidance DB-0156.

4. American Iron and Steel

Any contract(s) awarded under this Invitation for Bids is/are subject to the American Iron and Steel (AIS) requirements of 33 U.S.C §1388 for Clean Water State Revolving Fund projects or Public Law 114-113, Consolidated Appropriations Act, 2016, or subsequent appropriations acts, for Drinking Water State Revolving Fund projects. The Contractor must complete the statement of understanding regarding this requirement, found in Supplemental Contract Conditions, Item No. 9.

5. Equal Employment Opportunity and Affirmative Action

All qualified applicants will receive consideration for employment without regard to race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age (40 or older), disability, or genetic information. Bidders on this work will be required to comply with the Department of Labor regulations at 41 CFR Part 60-4, relating to Construction Contractors--Affirmative Action Requirements, which include the President's Executive Order No. 11246, as amended by Executive Order No. 11375 and Executive Order No. 13672, in the award and administration of contracts awarded under TWDB financial assistance agreements. Failure by the Contractor to carry out these requirements is a material breach, which may result in the termination of the awarded financial assistance.

6. Debarment and Suspension Certification

This contract is subject to the federal requirements of Subpart C of 2 CFR Part 180 and Part 1532 regarding Debarment and Suspension. The Contractor will comply with the assurances provided with the bid that leads to a contract.

7. Bid Guarantee

Each bidder shall furnish a bid guarantee equivalent to five percent of the bid price (Water Code 17.183). If a bid bond is provided, the Contractor shall utilize a surety company which is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

Forms to be submitted with Bid:

- WRD-255, Bidder's Certifications regarding Equal Employment Opportunity and Non-Segregated Facilities.
- SRF-404, Certification Regarding Debarment, Suspension and Other Responsibility Matters, (to be completed and submitted by the sub-recipient).
- Disadvantaged Business Enterprise (DBE) Construction Contract Phase Forms

Form	Prime Contractor	Submit Form To
TWDB-0216	Required	TWDB
TWDB-0217	Required	TWDB
TWDB-0373	Required	TWDB

III. SUPPLEMENTAL CONTRACT CONDITIONS

1. Supersession

The Owner and the Contractor agree that the TWDB Supplemental Conditions apply to that work eligible for Texas Water Development Board assistance to be performed under this contract and these clauses supersede any conflicting provisions of this contract.

2. Privity of Contract

Funding for this project is expected to be provided in part by the Texas Water Development Board. Neither the State of Texas, nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to applicable provisions 31 TAC Chapter 371 (DWSRF) or 375 (CWSRF) in effect on the date of the assistance award for this project.

3. Definitions

(a) The term "Owner" means the local entity contracting for the construction services.

(b) The term "TWDB" means the Executive Administrator of the Texas Water Development Board, or other person who may be at the time acting in the capacity or authorized to perform the functions of such Executive Administrator, or the authorized representative thereof.

(c) The term "Engineer" means the engineer the Owner has authorized to work on the project.

4. Laws to be Observed

In the execution of the Contract, the Contractor must comply with all applicable Local, State and Federal laws, including but not limited to laws concerned with labor, safety, minimum wages, and the environment. The Contractor shall make himself familiar with and at all times shall observe and comply with all Federal, State, and Local laws, ordinances and regulations which in any manner affect the conduct of the work, and shall indemnify and save harmless the Owner, Texas Water Development Board, and their representatives against any claim arising from violation of any such law, ordinance or regulation by the Contractor, their Subcontractor or their employees.

5. Review by Owner and TWDB

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

(b) Any such inspection or review by the TWDB shall not subject the State of Texas, or its representatives, to any action for damages.

6. Performance and Payment Bonds

Each Contractor awarded a construction contract must furnish performance and payment bonds:

(a) The performance bond shall include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices;

(b) The performance and payment bonds shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the Engineer of the political subdivision; and

(c) The Contractor shall utilize a surety company which is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

7. Payment Schedule and Cost Breakdown

(a) The Contractor shall submit for approval immediately after execution of the Agreement, a carefully prepared Progress Schedule, showing the proposed dates of starting and completing each of the various sections of the work, the anticipated monthly payments to become due to the Contractor, and the accumulated percent of progress each month.

(b) The following paragraph applies only to contracts awarded on a lump sum contract price:

COST BREAKDOWN - The Contractor shall submit to the Owner a detailed breakdown of the estimated cost of all work to be accomplished under the contract, arranged and itemized as to meet the approval of the Owner or funding agencies. This breakdown shall be submitted promptly after execution of the agreement and before any payment is made to the Contractor for the work performed under the contract. After approval by the Owner the unit prices established in the breakdown shall be used in estimating the amount of partial payments to be made to the Contractor.

8. Workman's Compensation Insurance Coverage (as applicable, consistent with Texas Labor Code § 406.096)

(a) The Contractor shall certify in writing that the Contractor provides workers' compensation insurance coverage for each employee of the Contractor employed on the public project.
(b) Each Subcontractor on the public project shall provide such a certificate relating to coverage of the Subcontractor's employees to the general Contractor, who shall provide the Subcontractor's certificate to the governmental entity.
(c) A Contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.
(d) The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.
(e) In this section:

i. "Building or construction" includes:
- erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
- remodeling, extending, repairing, or demolishing a structure; or
- otherwise improving real property or an appurtenance to real property through similar activities.

ii. "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

9. American Iron & Steel

The following statement must be completed by the Contractor and made a part of the agreement between the Owner and the Contractor:

The Contractor acknowledges to and for the benefit of the Owner ("Purchaser") and the Texas Water Development Board (TWDB) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contactor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and the TWDB that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the TWDB. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner to enforce this Agreement and recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the TWDB or any damages owed to the TWDB by the Owner). While the Contractor has no direct contractual privity with the TWDB, as a lender to the Owner for the funding of its project, the Owner and the Contractor agree that the TWDB is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the TWDB.

Additional information on the American Iron and Steel (AIS) and its applicability to this contract can be found in the TWDB-1106 guidance.

It is recommended the Owner receive and maintain files documenting the Contractor's use of AIS. Monthly compliance with AIS will be verified by the Owner through the submittal of the TWDB form TWDB-1106-A.

10. Davis-Bacon Wage Rate Requirements

(a) Compliance Procedures

In order to be held in compliance and satisfy this federal requirement, the following must be fulfilled:

i. **Wage Determinations** - U.S. Department of Labor (DOL) wage determination must be included in the bidding and contract documents. DOL wage determinations may be obtained online at http://www.wdol.gov/. Once it is determined that Davis-Bacon wage rates will apply to a construction contract, the Owner must state in the solicitation that Davis-Bacon prevailing wage rates are applicable and bid packages must include the current Davis-Bacon general wage determination for the area where construction will occur. While the solicitation remains open, the Owner must monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The Owner must amend the solicitation if the DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Owner may request a finding from the TWDB that there is not a reasonable time to notify interested Contractors of the modification of the wage determination.

ii. **Insert wage rate requirements in full for all contracts and subcontracts in excess of $2,000** - If the Owner is a governmental entity such as a city or district, it must insert in full the contract clauses shown below as Option 1: Section 3, Section 4 if the contract exceeds $100,000, and Section 5. If the Owner is a non-governmental entity such as a water supply corporation or a private company, it must insert in full the contract clauses shown below as Option 2: Section 3, Section 4 if the contract exceeds $100,000, and Section 5. The Owner must ensure all prime contracts require the same full text in any subcontracts.

iii. **Monthly Certification** – The Owner must complete and submit monthly a Davis Bacon Wage Rate Certificate of Compliance once construction has begun. **(Use Monthly Davis Bacon Wage Rate Certificate of Compliance Submittal by Owner (Subrecipient) DB-0154).**

iv. **Contractor Payroll Requirements** - The Contractor is required to pay the prevailing wage rates on a weekly basis to laborers and mechanics in accordance with the requirements of 29 CFR 5.5, which are incorporated into the actual construction contract. Contractors/ Subcontractors must furnish weekly a statement with respect to the wages paid to each employee during the preceding week. They may use the Department of Labor (DOL) Payroll Form WH-347 and weekly Statement of Compliance on the reverse, or their own payroll form with all of the same data elements as the DOL Payroll Form WH-347, and the TWDB's form, Statement of Compliance Certification by Contractor for SRF, DB-0155. The DOL Payroll Form WH-347 can be found under the forms section of this document or at the following link: http://www.dol.gov/whd/programs/dbra/wh347.htm.

v. **Interviews -** The Owner must periodically interview a sufficient number of employees entitled to the Davis-Bacon prevailing wages to verify that Contractors or Subcontractors are paying the appropriate wage rates. All interviews must be conducted in confidence. The Owner must use Standard Form 1445 (SF 1445) found in the forms section of TWDB guidance document TWDB-0156 or equivalent documentation to memorialize the interviews. The Owner must establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by Contractors or Subcontractors and the duration of the contract or subcontract. The Owner must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the Contractor or Subcontractor is not complying with Davis-Bacon. The Owner must immediately conduct interviews in response to an alleged violation of the prevailing wage requirements.

vi. **Payroll Records** - Certified payroll records are required to be retained by the Owner and Contractor for three years after completion of the construction project. The Owner must periodically conduct spot checks of a representative sample of weekly payroll data to verify that Contractors or Subcontractors are paying the appropriate wage rates.

vii. **Wage Rate Poster** – The Contractor must post the required Poster (WH-1321) and applicable wage rates at the construction site. The wage rate poster may be found at under the forms section of TWDB Guidance DB-0156 or at http://www.dol.gov/whd/programs/dbra/wh1321.htm.

viii. **Report Violations** – The Owner must immediately report violations of the Davis-Bacon prevailing wage requirements to the EPA Davis-Bacon Coordinator listed in the assistance agreement and to the appropriate DOL WHD Office listed at http://www.dol.gov/dol/contact/index.htm.

(b) Subcontracts

The Contractor will insert in full the required wage rate requirement in any subcontract in excess of $2,000 as specified in (a)(ii) of this section.

(c) Davis-Bacon General Wage Determinations

A "wage determination" is the listing of wage and fringe benefit for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the U.S. DOL has determined to be prevailing in a given area for a construction. The Davis-Bacon Wage Determinations are classified by the nature of the construction projects performed, specifically listed as "schedules": residential, building, highway, and heavy construction. A brief outline of the definitions for each schedule is listed below.

- Construction Type: Heavy determination

  This determination includes those projects that are not properly classified as either "building," "highway," or "residential." Unlike these classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

- Construction Type: Highway determination
  This determination includes construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

- Construction Type: Building determination
  This determination includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be "habitable" to be building construction. Also, the installation of heavy machinery and/or equipment does not generally change the project's character as a building.

- Construction Type: Residential
  This determination includes the construction, alteration or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.

The Owner should review their Contractor's wage decisions and confirm they provide an adequate classification of the labor required for the specific construction contract. Most CWSRF and DWSRF projects will fall under the "Heavy" construction type, but Owners should ask their consulting Engineers if unsure. Some contracts or projects may require more than one general schedule to be included depending on the nature and extent of the work (i.e. a building is constructed in a water treatment facility). This is described in more detail in DOL's All Agency Memorandum 130 with Addendum 131. See the DOL's website http://www.dol.gov/whd/programs/dbra/memorand.htm. In such cases, the TWDB would designate the work to which each wage determination or part thereof applies per Federal Acquisition Regulations (FAR) 22.404-2 thru 404-3 https://www.acquisition.gov/browse/far/22?&searchTerms=Regulations+%28FAR%29+22.404-2+thru+404-3 Should overlaps occur in the wage classification schedules for the contract(s), the Owner may consider adopting the higher rate classification.

In all cases, the Owner is responsible to insure an adequate classification is provided to insure compliance with the law. Where a Contractor alerts the Owner that the classification is inadequate, the Owner should work with the Contractor and the DOL to address any valid concerns.

All questions regarding Davis-Bacon guidance can be directed to: U.S. Department of Labor Wage and Hour Division1-866-4USWAGE (1-866-487-9243), TTY: 1-877-889-5627, Monday-Friday 8 a.m. to 8 p.m. Eastern Time.

If you require further information about Davis-Bacon and how to apply it to your project, please contact the Texas Water Development Board Project Team Manager for your region or Clay Schultz, Director, Regional Water Project Development, (512) 463-6277.

The Owner and Contractor may obtain additional information on the Davis-Bacon Wage Rates requirements in the TWDB's Guidance DB-0156 – *"Guidance on Davis-Bacon Wage Rate Requirements"*.

Option 1 – Applies to Governmental Entities (such as Cities and Districts)

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements.

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by the Clean Water State Revolving Fund and to any construction project carried out in whole or in part by assistance made available by the Drinking Water State Revolving Fund. If an Owner encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Owner must discuss the situation with the TWDB before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Owners shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that Subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the Owner shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Owners may request a finding from the TWDB that there is not a reasonable time to notify interested Contractors of the modification of the wage determination. The TWDB will provide a report of its findings to the Owner.

(ii) If the Owner does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the TWDB, at the request of the Owner, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Owner shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the Owner carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing Contractor (ordering instrument) rather than by publishing a solicitation, the Owner shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Owners shall review all subcontracts subject to DB entered into by prime Contractors to verify that the prime Contractor has required its Subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to an Owner's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Owner has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Owner shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Owner's Contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Owner(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance

with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1, the Water Resources Reform and Development Act of 2014 for a CWSRF-funded project or the Consolidated Appropriations Act, 2016 (or subsequent federal law) for a DWSRF-funded project, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Owners may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The Owner(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The TWDB shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Owner(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the Owner (s) to the TWDB.
The TWDB will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or

disapprove every additional classification request within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Owner(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TWDB shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the TWDB, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Owner(s) shall, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the EPA may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible,

and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Owner, that is, the entity that receives the funds from the TWDB. Such documentation shall be available on request of the TWDB or EPA. As to each payroll copy received, the Owner shall provide written confirmation in a form satisfactory to the TWDB indicating whether the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Owner(s) for transmission to the TWDB or EPA if requested by EPA, the TWDB, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a Subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Owner(s).

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

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

(D) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the TWDB, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them

available, the EPA or TWDB may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program.
If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll as a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the

event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

(10) Certification of eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The Owner shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of

forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

(3) Withholding for unpaid wages and liquidated damages. The Owner**,** upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Owner shall insert a clause requiring that the Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Owner shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the EPA, TWDB, and the Department of Labor, and the Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The Owner shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that Contractors or Subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The Owner must use Standard Form 1445 (SF 1445) found in the forms section of TWDB guidance document TWDB-0156 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are also available from EPA on request.

(b) The Owner shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by Contractors or Subcontractors and the duration of the contract or subcontract. Owners must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the Contractor or Subcontractor is not complying with DB.

Owners shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The Owner shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that Contractors or Subcontractors are paying the appropriate wage rates. The Owner shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by Contractors or Subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the Owner should spot check payroll data within two weeks of each Contractor or Subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Owners must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the Contractor or Subcontractor is not complying with DB. In addition, during the examinations the Owner shall verify evidence of fringe benefit plans and payments there under by Contractors and Subcontractors who claim credit for fringe benefit contributions.

(d) The Owner shall periodically review Contractors and Subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that Contractors and Subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Owners must immediately report potential violations of the DB prevailing wage requirements to the EPA Region 6 DB Coordinator, TWDB, and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

Option 2 – Applies to Non-Governmental Entities (such as Water Supply Corporations and Private Companies)

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements.

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by the CWSRF and to any construction project carried out in whole or in part by assistance made available by the DWSRF. If an Owner encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Owner must discuss the situation with the TWDB before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Owners must obtain proposed wage determinations for specific localities at www.wdol.gov. After the Owner obtains its proposed wage determination, it must submit the wage determination to the TWDB for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing Contractors (ordering instruments unless subsequently directed otherwise by the TWDB.)

(b) Owners shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that Subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the Owner shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Owners may request a finding from the TWDB that there is not a reasonable time to notify interested Contractors of the modification of the wage determination. The TWDB will provide a report of its findings to the Owner.

(ii) If the Owner does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the TWDB, at the request of the Owner, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Owner shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the Owner carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing Contractor (ordering instrument) rather than by publishing a solicitation, the Owner shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(d) Owners shall review all subcontracts subject to DB entered into by prime Contractors to verify that the prime Contractor has required its Subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to an Owner's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Owner has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument.

If this occurs, the Owner shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Owner's Contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Owner(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1, the Water Resources Reform and Development Act of 2014 for a CWSRF-funded project or the Consolidated Appropriations Act, 2016 (or subsequent federal law) for a DWSRF-funded project, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Owners may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The Owner(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The TWDB shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Owner(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the Owner(s) to the TWDB. The TWDB will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Owner(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TWDB shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the TWDB, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Owner(s) shall, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the EPA may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the

site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Owner, that is, the entity that receives the funds from the TWDB. Such documentation shall be available on request of the TWDB or EPA. As to each payroll copy received, the Owner shall provide written confirmation in a form satisfactory to the TWDB indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Owner(s) for transmission to the TWDB or EPA if requested by EPA, the TWDB, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a Subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Owner(s).

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

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

(D) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

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

(4) Apprentices and trainees

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the

applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

(10) Certification of eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The Owner shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

(3) Withholding for unpaid wages and liquidated damages. The Owner shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Owner shall insert a clause requiring that the Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Owner shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the EPA, TWDB, and the Department of Labor, and the Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The Owner shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that Contractors or Subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The Owner must use Standard Form 1445 (SF 1445) found in the forms section of TWDB guidance document TWDB-0156 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are also available from EPA on request.

(b) The Owner shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by Contractors or Subcontractors and the duration of the contract or subcontract. Owners must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the Contractor or Subcontractor is not complying with DB. Owners shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The Owner shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that Contractors or Subcontractors are paying the appropriate wage rates. The Owner shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by Contractors or Subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the Owner should spot check payroll data within two weeks of each Contractor or Subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Owners must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the Contractor or Subcontractor is not complying with DB. In addition, during the examinations the Owner shall verify evidence of fringe benefit plans and payments there under by Contractors and Subcontractors who claim credit for fringe benefit contributions.

(d) The Owner shall periodically review Contractors and Subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that Contractors and Subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Owners must immediately report potential violations of the DB prevailing wage requirements to the EPA Region 6 DB Coordinator, TWDB, and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

11. Payments

(a) Progress Payments:

i. The Contractor shall prepare their requisition for progress payment as of the last day of the payment month and submit it, with the required number of copies, to the Engineer for review. Except as provided in paragraph (iii) of this subsection, the amount of the payment due to the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting (1) five percent (5%) minimum of the total amount, as a retainage and (2) the amount of all previous payments. The total value of work completed to date shall be based on the actual or estimated quantities of work completed and on the

unit prices contained in the agreement (or cost breakdown approved pursuant to section 7.b relating to lump sum bids) and adjusted by approved change orders. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoices prices.
Copies of all invoices shall be available for inspection by the Engineer.

ii. The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Owner. Such payments shall not constitute a waiver of the right of the Owner to require the fulfillment of all terms of the contract and the delivery of all improvements embraced in the contract complete and satisfactory to the Owner in all details.

iii. This clause applies to contracts when the Owner is a District or Authority. The retainage shall be ten (10%) percent minimum of the amount otherwise due until at least fifty (50%) of the work has been completed. After the project is fifty (50%) percent completed, and if the District or Authority's Board finds that satisfactory progress is being made, then the District may authorize any of the remaining progress payments to be made in full. The District is not obligated to pay interest earned on the first 50% of work completed (Texas Water Code Sec. 49.276(d)).

iv. The five (5%) percent retainage of the progress payments due to the Contractor may not be reduced until the building of the project is substantially complete and a reduction in the retainage has been authorized by the TWDB.

(b) Withholding Payments. The Owner may withhold from any payment otherwise due to the Contractor so much as may be necessary to protect the Owner and if so elects may also withhold any amounts due from the Contractor to any Subcontractors or material dealers for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the Owner and will not require the Owner to determine or adjust any claims or disputes between the Contractor and his Subcontractors or material dealers, or to withhold any monies for their protection unless the Owner elects to do so.

The failure or refusal of the Owner to withhold any monies from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this contract.

(c) Payments Subject to Submission of Certificates. Each payment to the Contractor by the Owner shall be made subject to submission by the Contractor of all written certifications required of him and his Subcontractors by general and special conditions pertaining to this contract.

(d) Final Payment.

i. Upon satisfactory completion of the work performed under this contract,

as a condition before final payment under this contract or as a termination settlement under this contract the Contractor shall execute and deliver to the Owner a release of all claims against the Owner arising under, or by virtue of, this contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the Owner's claims against the Contractor or his sureties under this contract or applicable performance and payment bonds.

ii. After final inspection and acceptance by the Owner of all work under the contract, the Contractor shall prepare their requisition for final payment which shall be based upon the carefully measured or computed quantity of each item of work at the applicable unit prices stipulated in the Agreement or cost breakdown (if lump sum), as adjusted by approved change orders. The total amount of the final payment due the Contractor under this contract shall be the amount computed as described above less all previous payments.

iii. The retainage and its interest earnings, if any, shall not be paid to the Contractor until the TWDB has authorized a reduction in, or release of, retainage on the contract work.

iv. Withholding of any amount due to the Owner, under general and/or special conditions regarding "Liquidated Damages," shall be deducted from the final payment due the Contractor.

12. Equal employment opportunity and affirmative action

This provision applies to Clean Water State Revolving Fund Program and Drinking Water State Revolving Fund projects where the contract agreement is for more than $10,000.

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age (40 or older), disability, or genetic information. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for

training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the notice which contains the applicable goals set for minority and female participation and which is set forth in the solicitations from which this contract resulted.

13. Debarment and Suspension

This provision applies only to Clean Water State Revolving Fund Equivalency Program projects and Drinking Water State Revolving Fund projects. This contract is subject to the Title 40 Code of Federal Regulations Part 32 concerning Debarment and Suspension. The Contractor will comply with the assurances provided with the bid that led to this contract.

Instructions for Certification

(a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

(b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(c) The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

(d) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

(e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48

CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

(f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

(h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(i) Except for transactions authorized under paragraph (e) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions.

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

14. Disadvantaged Business Enterprises

The Texas Water Development Board's (TWDB) Clean Water and Drinking Water State Revolving Fund programs receive federal funds from the U. S. Environmental Protection Agency (EPA). As a condition of federal grant awards, EPA regulations require that loan recipients make a "good faith effort" to award a fair share of work to DBE's who are Minority Business Enterprises (MBE's), and Women-owned Business Enterprises (WBE's) whenever procuring construction, supplies, services and equipment.

The current fair share goals for the State of Texas are as follows:

Category	MBE	WBE
Construction	19.44%	9.17%
Equipment	16.28%	11.45%
Services	20.41%	13.66%
Supplies	25.34%	8.82%

After loan commitment, but prior to closing, Owners (Applicants) must provide forms TWDB-0216 and TWDB-0373. The project's Prime Engineer, Financial Advisor, and Bond Counsel must complete a TWDB-0217 form and indicate if any subcontracting opportunities will be available or if the Contractor will be self-performing the contract. Regardless of the procurement's outcome, all entities must submit a TWDB-0373 and list the Contractors selected by the Owner for the project. Failure to include a Contractor and contract amount will result in denial of payment until the proper documentation has been reviewed and approved.

For each construction contract, Owners are required to submit a TWDB-0216 and TWDB-0373 for the procurement of the project's Prime Contractor. If the Prime Contractor is utilizing Subcontractors for the project, then additional TWDB-0216 and TWDB-0373 forms will be required for submittal prior to request for payment.

The following forms are required for each contract:

Form	Prime Contractor	Submit Form To
TWDB-0216	Required	TWDB
TWDB-0217	Required	TWDB
TWDB-0373	Required	TWDB

(a) The Contractor shall, if awarding sub-agreements, to the extent appropriate for the goals listed in the instructions to bidders make a good faith effort to award a fair share of work to DBE's who are Minority Business Enterprises (MBE's) and Women-owned Business Enterprises (WBE's) as sources of supplies, construction, equipment and services by taking the following steps:

i. Ensure DBEs are made aware of contracting opportunities by including qualified small, minority, and women's businesses on solicitation lists;

ii. Assuring that small, minority, and women's businesses are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses;

iv. Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority, and women's businesses; and

v. Using the services and assistance of the Small Business Administration, Minority Business Development Agency of the U.S. Department of Commerce, and Texas Marketplace, as appropriate.

15. Archeological Discoveries and Cultural Resources

No activity which may affect properties listed or properties eligible for listing in the National Register of Historic Places or eligible for designation as a State Archeological Landmark is authorized until the Owner has complied with the provisions of the National Historic Preservation Act and the Antiquities Code of Texas.

The Owner has previously coordinated with the appropriate agencies and impacts to known cultural or archeological deposits have been avoided or mitigated. However, the Contractor may encounter unanticipated cultural or archeological deposits during construction.

If archeological sites or historic structures which may qualify for designation as a State Archeological Landmark according to the criteria in 13 TAC Chapter 26, or that may be eligible for listing on the National Register of Historic Places in accordance with 36 CFR Part 800, are discovered after construction operations are begun, the Contractor shall immediately cease operations in that particular area and notify the Owner, the TWDB, and the Texas Historical Commission, 1511 N. Colorado St., P.O. Box 12276, Capitol Station, Austin, Texas 78711-2276. The Contractor shall take reasonable steps to protect and preserve the discoveries until they have been inspected by the Owner's representative and the TWDB. The Owner will promptly coordinate with the State Historic Preservation Officer and any other appropriate agencies to obtain any necessary approvals or permits to enable the work to continue. The Contractor shall not resume work in the discovery until authorized to do so by the Owner.

16. Endangered Species

No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), and/or the State of Texas Parks and Wildlife Code on Endangered Species, or to destroy or adversely modify the habitat of such species.

If a threatened or endangered species is encountered during construction, the Contractor shall immediately cease work in the area of the encounter and notify the Owner, who will immediately implement actions in accordance with the ESA and applicable State statutes. These actions shall include reporting the encounter to the TWDB, the U. S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department, obtaining any necessary approvals or permits to enable the work to continue, or implement other mitigation actions. The Contractor shall not resume construction in the area of the encounter until authorized to do so by the Owner.

17. Hazardous Materials

Materials utilized in the project shall be free of any hazardous materials, except as may be specifically provided for in the specifications.

If the Contractor encounters existing material on sites owned or controlled by the Owner or in material sources that are suspected by visual observation or smell to contain hazardous materials, the Contractor shall immediately notify the Engineer and the Owner.

The Owner will be responsible for the testing and removal or disposal of hazardous materials on sites owned or controlled by the Owner. The Owner may suspend the work, wholly or in part during the testing, removal or disposal of hazardous materials on sites owned or controlled by the Owner.

18. Project Signage

The Owner must implement one of the signage options below as described in TWDB Guidance TWDB-1109:

- Online signage placed on community website or social media outlet;
- Press release;
- Posters or wall signage in a public building or location;
- Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility; or
- Standard on-site signage erected in a prominent location at the construction project site or along a major thoroughfare within the community as directed by the Owner.

If a recipient decides on a public or media event to publicize the accomplishment of significant events related to construction of the project, the U.S Environmental Protection Administration, Region 6, must be provided with at least a ten working day notice of the event and provided the opportunity to attend and participate. Please contact Associate Director Claudia Hosch, who can be reached at (214) 665-6464 or Hosch.Claudia@epa.gov.

19. Changes

*Provisions identified with an asterisk below are consistent with Local Government Code 271.060. Counties and Municipalities may modify the identified provisions, when applicable, to conform to Local Government Code 262.031 (Counties) or 252.048 (Municipalities).

(a) The Owner may at any time, without notice to any surety, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including but not limited to changes:
   i. In the specifications (including drawings and designs);
   ii. In the time, method or manner of performance of the work;
   iii. To decrease or increase the quantity of work to be performed or materials, equipment or supplies to be furnished;

(b) *The total price of a contract may not be increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.

(c) *A contract with an original contract price of $1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than $1 million increases the contract amount to $1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent.

(d) *A governing body may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of $50,000 or less.

(e) Changes that involve an increase in price will be supported by documentation of the cost components. For projects funded through the EDAP program, or with grant proceeds, TWDB staff may request this information to be provided in a format equivalent to the Cost and Pricing Information form (No. WRD-277).

(f) Any change orders involving a change in the project requiring a relocation of project components, sizing, or process may require additional environmental approval. A map and description of the proposed changes should be sent to the TWDB Environmental Reviewer for coordination and approval as soon as possible to avoid any delay.

20. Operation and Maintenance Manuals and Training

(a) The Contractor shall obtain installation, operation, and maintenance manuals from manufacturers and suppliers for equipment furnished under the contract. The Contractor shall submit three copies of each complete manual to the Engineer within 90 days after approval of shop drawings, product data, and samples, and not later than the date of shipment of each item of equipment to the project site or storage location.

(b) The Owner shall require the Engineer to promptly review each manual submitted, noting necessary corrections and revisions. If the Engineer rejects the manual, the Contractor shall correct and resubmit the manual until it is acceptable to the Engineer as being in conformance with the design concept of the project and for compliance with information given in the Contract Documents. Owner may assess the Contractor a charge for reviews of the same items in excess of three (3) times. Such procedure shall not be considered cause for delay.

(c) Acceptance of manuals by Engineer does not relieve the Contractor of any requirements of terms of Contract.

(d) The Contractor shall 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.

(e) 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 the equipment. Each manual is to be bound in a folder and labeled to identify the contents and project to which it applies. The manual shall contain the following applicable items:

i. A listing of the manufacturer's identification, including order number, model, serial number, and location of parts and service centers.
ii. A list of recommended stock of parts, including part number and quantity.
iii. Complete replacement parts list.
iv. Performance data and rating tables.
v. Specific instructions for installation, operation, adjustment, and maintenance.
vi. Exploded view drawings for major equipment items.

vii. Lubrication requirements.
viii. Complete equipment wiring diagrams and control schematics with terminal identification.

21. As-Built Dimensions and Drawings

(a) Contractor shall make appropriate daily measurements of facilities constructed and keep accurate records of location (horizontal and vertical) of all facilities.

(b) Upon completion of each facility, the Contractor shall furnish the Owner with one set of direct prints, marked with red pencil, to show as-built dimensions and locations of all work constructed. As a minimum, the final drawings shall include the following:

i. Horizontal and vertical locations of work.
ii. Changes in equipment and dimensions due to substitutions.
iii. "Nameplate" data on all installed equipment.
iv. Deletions, additions, and changes to scope of work.
v. Any other changes made.

22. Close-Out Procedures

To close-out the contract and release final retainage, the following steps must be completed:

(a) TWDB Staff must conduct a construction contract final inspection (CCFI);
(b) The following submittals must be received, reviewed, and accepted by the TWDB:
i. The final change order, adjustment of quantities, or a statement that all change orders have previously been submitted and there will be no more change orders;
ii. The final pay request from the Contractor;
iii. An affidavit by the Contractor that all bills have been paid;
iv. Certification by the consulting Engineer that the work has been completed and was constructed in accordance with the approved plans and specifications and sound engineering principals and construction practices;
v. Acceptance of the project by the Owner in the form of a written resolution or other formal action;
vi. Notification of the beginning date of the warranty period for the contract; and
vii. Confirmation that the Owner has received the as-built drawings from the Contractor.
(c) TWDB will issue a Certificate of Approval allowing the release of retainage.

23. Additional Forms and Information

The following forms and guidance documents, mentioned throughout this Guidance, are available on the TWDB site at: http://www.twdb.texas.gov/financial/instructions/index.asp

Forms:

Contractor's Act of Assurance (ED-103)
Contractor's Resolution on Authorized Representative (ED-104)
Debarment / Suspension Certification (SRF-404)
Bidder's Certifications- EEO (WRD – 255)

DBE Affirmative Steps solicitation Report (TWDB 0216)
DBE Prime Contractor Affirmative Steps Certification & Goals (TWDB 0217)
DBE Loan/Grant Participation Summary (TWDB 0373)
Monthly American Iron and Steel Certificate (TWDB-1106-A)
American Iron and Steel (AIS) De Minimis Log (TWDB-1106-B)

Monthly Davis Bacon Wage Rate Certificate of Compliance Submittal by Owner (Sub-Recipient) (DB-0154)

Guidance Documents:

TWDB-0210 Disadvantaged Business Enterprise Guidance
Requirements for American Iron and Steel (AIS) Guidance (TWDB-1106)
Guidance on Davis-Bacon Wage Rate Requirements for State Revolving Fund Projects (DB-0156)

Guidance on Davis-Bacon Wage Rate Requirements for State Revolving Fund Projects

Overview

Davis-Bacon prevailing wage requirements apply to the construction, alteration, or repair of treatment works carried out, in whole or in part, with assistance made available by the Clean Water State Revolving Fund (CWSRF) and to any construction project carried out, in whole or in part, by assistance made available by the Drinking Water State Revolving Fund (DWSRF).

For the CWSRF and DWSRF programs, the Davis-Bacon prevailing wage requirements apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair, including painting, of a treatment works project under the CWSRF or a construction project under the DWSRF. Contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The prevailing wage requirements apply to all State Revolving Fund (SRF) financial assistance projects.

For prime contracts in excess of $100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to Davis-Bacon covered contracts.

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Wage Rate Requirements

The following wage rate requirements apply to entities receiving financial assistance under the CWSRF and DWSRF programs and will be incorporated into the associated legal instruments. These entities, such as cites, districts, water supply corporations or private companies, are referred to as "subrecipients" within this document.

CWSRF: A subrecipient must comply with the requirements of section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) in all procurement contracts and must require contractors to include compliance with section 513 of the Federal Water Pollution Control Act in all subcontracts and other lower tiered transactions. All contracts and subcontracts for the treatment works construction project must contain in full in any contract in excess of $2,000 the wage rate requirements contract clauses prescribed by TWDB. Section 513 requires compliance with 40 U.S. Code Sections 3141 to 3144, 3146, and 3147 covering wage rate requirements.

DWSRF: A subrecipient must comply with the requirements of section 1452(a)(5) of the Safe Drinking Water Act (42 U.S.C.300j-12(a)(5)) in all procurement contracts and must require contractors to include compliance with section 1452(a)(5) of the Safe Drinking Water Act in all subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction project must contain in full in any contract in excess of $2,000 the wage rate requirements contract clauses prescribed by TWDB. Section 1452(a)(5) (42 U.S.C.300j-12(a)(5)) requires compliance with 42 U.S.C.300j-9(e) which in turn requires compliance with 40 U.S. Code Sections 3141 to 3144, 3146, and 3147 covering wage rate requirements.

Subrecipients must adhere to the requirements in Sections 1-5 in Appendix 1 (for governmental entities) or Appendix 2 (for non-governmental entities).

Compliance Procedures

In order to be held in compliance and satisfy this federal requirement, entities will need to do the following:

1. **Wage Determinations -** U.S. Department of Labor (DOL) wage determination must be included in the bidding and contract documents. DOL wage determinations may be obtained online at https://beta.sam.gov. Once it is determined that Davis-Bacon wage rates will apply to a construction contract, the subrecipient's contracting organization must state in the solicitation that Davis-Bacon prevailing wage rates are applicable and bid packages must include the current Davis-Bacon general wage determination for the area where construction will occur**.** While the solicitation remains open, the subrecipient must monitor https://beta.sam.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients must amend the solicitation if the DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipient may request a finding from TWDB that there is not a reasonable time to notify interested contractors of the modification of the wage determination.

2. **Insert wage rate requirements in full for all contracts and subcontracts in excess of $2,000 -** If the subrecipient is a governmental entity such as a city or district, it must insert in full the contract clauses found in Appendix 1, Section 3, Section 4 if the contract exceeds

$100,000, and Section 5. If the subrecipient is a non-governmental entity such as a water supply corporation or a private company, it must insert in full the contract clauses found in Appendix 2, Section 3, Section 4 if the contract exceeds $100,000, and Section 5. The subrecipient must ensure all prime contracts require the same full text in any subcontracts.

3. **Monthly Certification** - A Monthly Davis Bacon Wage Rate Certificate of Compliance must be completed by the subrecipient of the SRF funding and submitted monthly to TWDB once construction has begun. **(See Monthly Davis Bacon Wage Rate Certificate of Compliance Submittal by Owner (Subrecipient) DB-0154).**

4. **Contractor Payroll Requirements** - The contractor is required to pay the prevailing wage rates on a weekly basis to laborers and mechanics in accordance with the requirements of 29 CFR 5.5, which are incorporated into the actual construction contract. Contractors/ subcontractors must furnish weekly a statement with respect to the wages paid to each employee during the preceding week. They may use the Department of Labor (DOL) Payroll Form WH- 347 and weekly Statement of Compliance on the reverse, or their own payroll form with all of the same data elements as the DOL Payroll Form WH-347, and the TWDB's form, Statement of Compliance Certification by Contractor for SRF, DB-0155. The DOL Payroll Form WH-347 can be found under the forms section of this document or at the following link: http://www.dol.gov/whd/programs/dbra/wh347.htm. **(See DOL Payroll Form WH-347)**

5. **Interviews** - The subrecipient must periodically interview a sufficient number of employees entitled to the Davis-Bacon prevailing wages to verify that contractors or subcontractors are paying the appropriate wage rates. All interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) found in the forms section or equivalent documentation to memorialize the interviews. The subrecipient must establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. Subrecipients must immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. (See Section 5 of Appendix 1 and 2)

6. **Payroll Records** - Certified payroll records are required to be retained by the subrecipient and contractor for three years after completion of the construction project. The subrecipient must periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. (See Section 5 of Appendix 1 and 2)

7. **Wage Rate Poster** - Post the required Poster (WH-1321) and applicable wage rates at the construction site. The wage rate poster may be found at under the forms section of this document or at http://www.dol.gov/whd/programs/dbra/wh1321.htm. **(See Davis-Bacon Wage Rate Poster, WH-1321)**

8. **Report Violations** - Subrecipients must immediately report violations of the Davis-Bacon prevailing wage requirements to the EPA Davis-Bacon Coordinator listed in the assistance agreement and to the appropriate DOL WHD Office listed at http://www.dol.gov/whd/america2.htm. (See Section 5 of Appendix 1 and 2)

Davis-Bacon General Wage Determinations

A "wage determination" is the listing of wage and fringe benefit for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the U.S. DOL has determined to be prevailing in a given area for a particular type of construction. The Davis-Bacon Wage Determinations are classified by the nature of the construction projects performed, specifically listed as "schedules": residential, building, highway, and heavy construction. A brief outline of the definitions for each schedule is listed below.

- Construction Type: Heavy determination
  This determination includes those projects that are not properly classified as either "building," "highway," or "residential." Unlike these classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

- Construction Type: Highway determination
  This determination includes construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

- Construction Type: Building determination
  This determination includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be "habitable" to be building construction. Also, the installation of heavy machinery and/or equipment does not generally change the project's character as a building.

- Construction Type: Residential
  This determination includes the construction, alteration or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.

Entities should review their contractor's wage decisions and confirm they provide an adequate classification of the labor required for the specific construction contract. Most CWSRF and DWSRF projects will fall under the "Heavy" construction type, but entities should ask their consulting engineers if unsure. Some contracts or projects may require more than one general schedule to be included depending on the nature and extent of the work (i.e. a building is constructed in a water treatment facility). This is described in more detail in DOL's All Agency Memorandum 130 with Addendum 131. See the DOL's website http://www.dol.gov/whd/programs/dbra/memorand.htm. In such cases, the contracting agency should designate the work to which each wage determination or part thereof applies per FAR 22.404-2 thru 404-3 (Federal Acquisition Regulations). Should overlaps occur in the wage classification schedules for the contract(s), the owner may consider adopting the higher rate classification.

https://www.acquisition.gov/browse/index/far
In all cases, the entity is responsible to insure an adequate classification is provided to insure compliance with the law. Where contractors alert the owner that the classification is inadequate, the owner should work with the contractor and the DOL to address any valid concerns. See the Contact Information below for additional resources.

Requesting Additional Wage Determinations (Using SF 1444)

If the wage determinations found at https://beta.sam.gov are missing a wage rate needed for the specific job classification, construction type, and/or project location, it will be necessary to seek a conformance from U.S. Department of Labor (DOL). A conformance is a customized wage rate generally negotiated by the contractor and his or her employee(s) and approved by DOL, and is only valid for the particular project for which it is granted.

Ideally, the conformance process should be initiated after the bid is awarded, but before work has started on the project. Once the bid is awarded, the subrecipient should ask the winning bidder to review the wage determination to assess whether any job classifications necessary for the completion of the project are missing from the DOL's wage determination for the project's area.

The prime contractor for the SRF construction contract initiates the conformance request by completing a Standard Form (SF) 1444 – Request for Authorization of Additional Classification and Rate.

See Appendix 3 for instructions on completing SF 1444 – Request for Authorization of Additional Classification and Rate.

Contact Information

All questions regarding Davis-Bacon guidance can be directed to: U.S. Department of Labor Wage and Hour Division1-866-4USWAGE (1-866-487-9243), TTY: 1-877-889-5627, Monday-Friday 8 a.m. to 8 p.m. Eastern Time.

If you require further information about Davis-Bacon and how to apply it to your project, please contact the Texas Water Development Board Project Team Manager for your region or Clay Schultz, Director, Regional Water Project Development at (512) 463-6277.

Additional Resources:

1. For Wage Determinations applicable to construction projects in Texas: https://beta.sam.gov

2. For more information on prevailing wage and wage determinations visit the Prevailing Wage Resource Book: https://www.dol.gov/whd/govcontracts/pwrb/toc.htm

3. The United States Department of Labor website:
   http://www.dol.gov/whd/govcontracts/dbra.htm
   The webpage provides an overview, compliance assistance material, poster information, recordkeeping, DOL contact information and more.

4. Davis-Bacon and Related Acts (DBRA) Frequently Asked questions
   More in-depth information can be accessed at the Department of Labor (DOL) website:
   http://www.dol.gov/whd/programs/dbra/faqs.htm

Contact Information – Department of Labor Texas Offices

Clear Lake District Office US Dept. of Labor Wage & Hour Division Camino Center II 17625 El Camino Real Suite 482 Houston, TX 77058	Phone: (281) 488-0690 1-866-4-USWAGE (1-866-487-9243)	Adrian Samaniego District Director
Dallas District Office US Dept. of Labor Wage & Hour Division The Offices @ Brookhollow 1701 E. Lamar Blvd., Suite 270, Box 22 Arlington, TX 76006-7303	Phone: (817) 861-2150 1-866-4-USWAGE (1-866-487-9243)	Jesus Valdez District Director
Houston District Office US Dept. of Labor Wage & Hour Division 8701 S. Gessner Drive, Suite 1164 Houston, TX 77074-2944	Phone: (713) 339-5500 1-866-4-USWAGE (1-866-487-9243)	Robin Mallet District Director
McAllen District Office US Dept. of Labor Wage & Hour Division 1101 E. Hackberry Ave., Suite 400 McAllen, TX 78501	Phone: (956) 682-4631 1-866-4-USWAGE (1-866-487-9243)	Nathan Barrow District Director
Corpus Christi Area Office US Dept. of Labor Wage & Hour Division Wilson Plaza 606 W. Carancahua, Suite 705 Corpus Christi, Texas 78476	Phone: (361) 888-3152 1-866-4-USWAGE (1-866-487-9243)	Vacant District Director
San Antonio District Office US Dept. of Labor Wage & Hour Division Northchase 1 Office Building 10127 Morocco, Suite 140 San Antonio, TX 78216	Phone: (210) 308-4515 1-866-4-USWAGE (1-866-487-9243)	Cynthia Ramos District Director
Austin District Office US Dept. of Labor Wage & Hour Division JJ Pickles Federal Building 300 East 8th Street, Suite 865 Austin, TX 78701	Phone: (512) 236-2560 1-866-4-USWAGE (1-866-487-9243)	Nicole Sellers District Director

West Texas Panhandle and Northwest Quadrant: See Albuquerque, NM

Albuquerque District Office **Mailing Address:** US Dept. of Labor Wage and Hour Division P.O. Box 907 Albuquerque, NM 87103-0907 **Physical Address:** 500 Gold, SW - Suite 12000 Albuquerque, NM 87102	Phone: (505) 248-6100 1-866-4-USWAGE (1-866-487-9243)	Evelyn Sanchez District Director

Forms Section

Monthly Davis-Bacon Wage Rate Certificate of Compliance Submittal by Owner (Subrecipient)

TWDB Project No. _____

Loan No. _____

This executed certificate must be submitted with each Outlay report for labor included within construction contracts. This Certificate applies only for Financial Assistance CLOSED AFTER 10/30/2009.

I , _____, _____ of
(Name) (Title)
_____ hereby certify that periodic reviews of a
(Name of entity)
representative sample of the weekly payroll data, and contractor weekly payroll certifications, such as OMB No. 1235-0008, have been performed to verify that contractors and subcontractors are paying the appropriate wage rate for compliance with section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) for the Clean Water State Revolving Fund or with section 1452(a)(5) of the Safe Drinking Water Act (42 U.S.C.300j-12(a)(5)) for the Drinking Water State Revolving Fund. These laws require payment of prevailing wages in accordance with 40 U.S.C. §§ 3141–3144, 3146, and 3147 (contained within the Davis-Bacon Act, as amended).

I understand that a false statement herein may subject me to penalties under federal and state laws relating to filing false statements and other relevant statutes.

_____ _____
Signature **Date**

Standard Form 1445 – Labor Standards Interview

LABOR STANDARDS INTERVIEW

CONTRACT NUMBER	EMPLOYEE INFORMATION		
	LAST NAME	FIRST NAME	MI
NAME OF PRIME CONTRACTOR			
	STREET ADDRESS		
NAME OF EMPLOYER			
	CITY	STATE	ZIP CODE
SUPERVISOR'S NAME			
LAST NAME / FIRST NAME / MI	WORK CLASSIFICATION	WAGE RATE	

ACTION	CHECK BELOW YES	NO
Do you work over 8 hours per day?		
Do you work over 40 hours per week?		
Are you paid at least time and a half for overtime hours?		
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?		

WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?

	TOOLS YOU USE	
HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?		
DATE OF LAST WORK DAY BEFORE INTERVIEW *(YYMMDD)*		
DATE YOU BEGAN WORK ON THIS PROJECT *(YYMMDD)*		

THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE

EMPLOYEE'S SIGNATURE	DATE *(YYMMDD)*

INTERVIEWER	SIGNATURE	TYPED OR PRINTED NAME	DATE *(YYMMDD)*

INTERVIEWER'S COMMENTS

WORK EMPLOYEE WAS DOING WHEN INTERVIEWED	ACTION *(If explanation is needed, use comments section)*	YES	NO
	IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?		
	ARE WAGE RATES AND POSTERS DISPLAYED?		

FOR USE BY PAYROLL CHECKER

IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?

☐ YES ☐ NO

COMMENTS

CHECKER

LAST NAME	FIRST NAME	MI	JOB TITLE

SIGNATURE	DATE *(YYMMDD)*

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable

STANDARD FORM 1445 (REV. 12-96)
Prescribed by GSA - FAR (48 CFR) 53.222(g)

Statement of Compliance Certification by Contractor for State Revolving Funds Federal Davis-Bacon Requirements

In accordance with Title 29 CFR Part 5.5(a)(3)(ii), each weekly payroll must be accompanied by a Statement of Compliance Certification executed by each contractor/subcontractor employing mechanics and laborers at the work site in which the federal government is to participate. Contractors may choose to use the DOL Form WH-347 payroll with the accompanying statement of compliance located on the back of Form WH-347 OR provide contractor's own payroll form using this TWDB Statement of Compliance Certification, DB-0155.

Date: _____
Estimate Number:_____ for the payroll period _____ to_____
Name of Project: _____ Location:_____
Contract Number:_____ TWDB SRF Project #: _____
Date Contract Awarded:_____

I_____ (Name and Title of Signatory Party)
do hereby state:

(1) That I pay or supervise the payment, during the above payroll period, of the persons employed by

_____ (Contractor or Subcontractor);
that all persons employed on said project have been paid the full weekly wages earned;
that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ (Contractor or Subcontractor)
from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Start. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145) as described below:

_____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) EXCEPTIONS below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH
☐ Each laborer or mechanic listed in the attached payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS	

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

U.S. Department of Labor
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

U.S. Wage and Hour Division
Rev. Dec. 2008

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐ | ADDRESS | OMB No.: 1235-0008 Expires: 02/28/2018

PAYROLL NO. | FOR WEEK ENDING | PROJECT AND LOCATION | PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE HOURS WORKED EACH DAY	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS FICA	WITH-HOLDING TAX			OTHER	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
			O											
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that is will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)

U.S. Department of Labor Payroll form WH-347

Date _____

I, _____ _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the
(Contractor or Subcontractor)

_____; that during the payroll period commencing on the
(Building or Work)

_____ day of _____, _____, and ending the _____ day of _____, _____,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

_____

_____

_____

_____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ – in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ – Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

EMPLOYEE RIGHTS
UNDER THE DAVIS-BACON ACT
FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES	You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.
OVERTIME	You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.
ENFORCEMENT	Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.
APPRENTICES	Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.
PROPER PAY	If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.

For additional information:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

U.S. Wage and Hour Division

WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

WH 1321(Revised April 2009)

Appendix 1 – Applies to Governmental Entities (such as Cities and Districts)

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements.

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the TWDB before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor https://beta.sam.gov weekly to ensure that the wage determination contained in the solicitation remains current. The recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the TWDB that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The TWDB will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the TWDB, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor https://beta.sam.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from https://beta.sam.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The subrecipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1, the Water Resources Reform and Development Act of 2014 for a CWSRF-funded project or the Consolidated Appropriations Act, 2016 (or subsequent federal law) for a DWSRF-funded project, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, https://beta.sam.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The TWDB shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the TWDB. The TWDB will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TWDB shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the TWDB, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s) shall, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the EPA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the funds from the TWDB. Such documentation shall be available on request of the TWDB or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the TWDB indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the TWDB or EPA if requested by EPA, the TWDB, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

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

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

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

(4) Apprentices and trainees

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S.

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

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

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

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly

number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the EPA, TWDB, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) found in TWDB guidance document TWDB-0156 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are also available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA Region 6 DB Coordinator, TWDB, and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

Appendix 2 – Applies to Non-Governmental Entities (such as Water Supply Corporations and Private Companies)

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements.

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the TWDB before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients must obtain proposed wage determinations for specific localities at https://beta.sam.gov. After the subrecipient obtains its proposed wage determination, it must submit the wage determination to the TWDB for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the TWDB.)

(b) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor https://beta.sam.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the TWDB that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The TWDB will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the TWDB, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor https://beta.sam.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from https://beta.sam.gov into the ordering instrument.

(d) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The subrecipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1, the Water Resources Reform and Development Act of 2014 for a CWSRF-funded project or the Consolidated Appropriations Act, 2016 (or subsequent federal law) for a DWSRF-funded project, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, https://beta.sam.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The TWDB shall approve a

request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the TWDB. The TWDB will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TWDB shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the TWDB, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s) shall, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any

laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the EPA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the funds from the TWDB. Such documentation shall be available on request of the TWDB or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the TWDB indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the TWDB or EPA if requested by EPA, the TWDB, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

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

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

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

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the

Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

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

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

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the EPA, TWDB, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) found in TWDB guidance document TWDB-0156 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are also available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA Region 6 DB Coordinator, TWDB, and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

Appendix 3 – Requesting Additional Wage Determinations

If the wage determinations found on https://beta.sam.gov are missing a wage rate needed for the specific job classification, construction type, and/or project location, it will be necessary to seek a conformance from U.S. Department of Labor (DOL). A conformance is a customized wage rate generally negotiated by the contractor and his or her employee(s) and approved by DOL, and is only valid for the particular project for which it is granted.

Ideally, the conformance process should be initiated after the bid is awarded, but before work has started on the project. Once the bid is awarded, the subrecipient should ask the winning bidder to review the wage determination to assess whether any job classifications necessary for the completion of the project are missing from the DOL's wage determination for the project's area.

The prime contractor for the SRF construction contract initiates the conformance request by completing a **Standard Form (SF) 1444 – Request for Authorization of Additional Classification and Rate** (found at the end of this document).

The following is an overview of the process that the TWDB and its subrecipients are required by EPA and DOL to follow:

1. Prime Contractor completes the SF 1444 and submits the fully executed form, along with the applicable existing DOL Wage Decision for the area, to the subrecipient (such as the City, District, or Water Supply Corporation).

2. Subrecipient reviews and, if it concurs, submits the SF 1444 and existing DOL Wage Decision for the area to the TWDB by emailing a scan of the completed form and Wage Decision to Wages@twdb.texas.gov.

3. TWDB reviews and submits the request to the DOL, along with a copy to EPA.

4. DOL responds to the TWDB with a decision.

5. TWDB informs the subrecipient of DOL's decision to approve, modify or deny the request.

6. Subrecipient incorporates the approved conformance wage determination into the construction contract and awards the contract within 180 days of the conformance issuance date. Copies of the conformance approval should be maintained with Davis-Bacon records.

Questions: Email TWDB at Wages@twdb.texas.gov

Before completing and submitting the SF 1444, please note:

All classes of laborers or mechanics that are not listed in an existing DOL wage determination and that are to be employed under the contract must be classified in conformance with the existing DOL wage determination for the area. Therefore, any additional classification, along with the associated wage rate and fringe benefits, may only be approved by DOL when the following have been met:

(1) The work to be performed by the classification being requested on the SF 1444 is not performed by a classification that is already in an existing DOL wage determination;

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

(3) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates contained in the existing DOL wage determination for the area.

Instructions for boxes on SF 1444:

Check "Construction Contract" at the top of the form

Box 2. Insert the following:

Texas Water Development Board
Austin, TX

Box 3. Prime Contractor's name

Box 4. Date the signed form was emailed to TWDB

Box 5. TWDB's Project Number

Box 6. The date the bid was opened (Bid letting date)

Box 7. The date the contract was awarded.

Box 8. The actual date the contractor will be starting or started work.

Box 9. *Leave blank - this section is not applicable.*

Box 10. List all subcontractors that will utilize the labor classification listed in box 13a. If none, enter "N/A."

Box 11. Project title and description of the project work.

Box 12. Location of project (include city, county and state).

Box 13. The information for "Number" and "Date" are found on the front page of the DOL's General Decision for the area.

Number: Look for the "General Decision Number" (for example: TX180116).

Dated: The date is immediately after the General Decision Number.

Box 13a. List all jobs for which you are requesting a wage (for either the prime or the subcontractor). **Include a detailed job description and duties to be performed. (Note: If the proposed job classification is not one that is commonly used by DOL in their Wage Determination in Texas, such as a "CARPENTER", "ELECTRICIAN", or "TRUCK DRIVER", it is important to include a detailed description with the initial request. The DOL needing to follow up with a request for a detailed job description for a new classification name will delay their review and response significantly.)**

Boxes 13b and 13c. The proposed wage and fringe rates should bear a reasonable likeness to the category classification wage and fringe rates (operator, laborer, truck driver, etc.) listed in the existing DOL wage determination for the area.

Box 14. If there is a subcontractor listed on line 10, its representative signs on this line (include title).

Box 15. The prime contractor's representative must sign on this line (include title).

Box 16. If the prime contractor or subcontractor has a specific employee who will be performing the labor classification(s) listed in box 13a, or if the employees' have legal representation (such as a union), the employee or representative must sign and include their title. (Note: the designated representative of an existing employee cannot be the contractor's personnel office or any other contractor representative.) If no existing employee is known or identified to perform work under the listed classification, then enter "Unknown" in Box 16. The "Agree" or "Disagree" boxes are checked by anyone signing in boxes 14, 15, and 16.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE

CHECK APPROPRIATE BOX
☐ SERVICE CONTRACT
☐ CONSTRUCTION CONTRACT

OMB No.: 9000-0089
Expires: 02/28/96

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.

NOTE: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16 AND SUBMIT THE REQUEST, IN QUADRUPLICATE, TO THE CONTRACTING OFFICER

1. TO:	2. FROM: *(REPORTING OFFICE)*
ADMINISTRATOR, Employment Standards Administration WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. 20210	

3. CONTRACTOR	4. DATE OF REQUEST

5. CONTRACT NUMBER	6. DATE BID OPENED *(SEALED BIDDING)*	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED *(IF APPLICABLE) (SCA ONLY)*

10. SUBCONTRACTOR *(IF ANY)*

11. PROJECT AND DESCRIPTION OF WORK *(ATTACH ADDITIONAL SHEET IF NEEDED)*

12. LOCATION *(CITY, COUNTY AND STATE)*

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: _____ DATED: _____

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY) *(Use reverse or attach additional sheets, if necessary)*	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE *(IF ANY)*	15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE

16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE	TITLE	CHECK APPROPRIATE BOX REFERENCING BLOCK 13.
		☐ AGREE ☐ DISAGREE

TO BE COMPLETED BY CONTRACTING OFFICER *(CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))*

☐ THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

☐ THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

(Send copies 1, 2, and 3 to Department of Labor)

SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE	TITLE AND COMMERCIAL TELEPHONE NO.	DATE SUBMITTED

NSN 7540-01-268-0631
Previous edition is usable

DEPARTMENT OF LABOR

STANDARD FORM 1444 (REV. 12-90)
Prescribed by GSA-FAR (48 CFR) 53.222 (f)

American Iron and Steel (AIS) Guidance for Clean Water & Drinking Water State Revolving Fund Projects

This document is not a comprehensive representation of the federal requirements. For complete details of the federal requirements visit: https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement

In any instance when there may be a discrepancy between this guidance and the actual federal requirements, program participants must adhere to the federal requirements.

TWDB-1106
Rev 05/19

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Overview

It is the intent of the Texas Water Development Board (TWDB) to ensure that applicants, consultants and contractors are provided with procedures and recommendations for implementation of the American Iron and Steel (AIS) provisions for the Clean and Drinking Water State Revolving Funds. These provisions are currently contained in Section 608 of the Federal Water Pollution Control Act (33 U.S.C. §1388) for the Clean Water State Revolving Fund (CWSRF) program and in federal laws, including the federal appropriation acts and Section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. §300j-12(a)(4)), as applicable, for the Drinking Water State Revolving Fund (DWSRF) program.

The AIS provisions require CWSRF and DWSRF assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works. **For the CWSRF program, the AIS requirements apply only to the construction, alteration, maintenance, or repair of treatment works [1] projects. For the DWSRF program, the AIS requirements apply to all public water system projects.** Based on the statutory provisions, the effective date depends on the date the TWDB loan was closed and varies by program.

Effective Dates

CWSRF:

If the loan closes on or after October 1, 2014:	
(a) If the Plans and Specifications for the project were approved by TWDB prior to June 10, 2014	Exempt from AIS
(b) If the Plans and Specifications for the project were approved by TWDB on or after June 10, 2014	AIS applies

DWSRF:

The American Iron and Steel provisions generally apply to any financial assistance closed on or after January 17, 2014. There may be statutory exceptions to the AIS requirements based on the date of approval of plans and specifications by a state agency. The entity should contact the project's Team Manager or Project Manager if there are questions regarding AIS exceptions.

CWSRF and DWSRF

Planning, Acquisition, and Design funded separately from the Construction Phase:

If the original loan for the planning and/or design of a project closed prior to January 17, 2014, then the AIS provision would not apply to the construction phase of the same project.

1. "Treatments works" is defined in 33 U.S. Code § 1292 (2).

United States (U.S.) Environmental Protection Agency (EPA) Guidance

EPA has provided guidance through the following resources:

1. American Iron and Steel Requirement Guidance (March 20, 2014) (**Attachment 1**)
2. Questions and Answers Part 1: Valves and Hydrants (May 30, 2014) (**Attachment 2**)
3. Questions and Answers Part 2: Products, Projects and Process (September 10, 2014) (**Attachment 3**)
4. Questions and Answers Part 3: Plans and specifications dates, Refinancing and Coatings (March 16, 2015) (**Attachment 4**)
5. EPA's American Iron and Steel webpage - https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement

Please contact TWDB with any questions regarding applicability of AIS requirements.

Covered Iron and Steel Products

If the project receiving CWSRF or DWSRF funds must comply with the AIS requirements, then all covered iron and steel products must be made in the United States, no matter whether the CWSRF or DWSRF was the source of funds used to purchase a particular covered iron and steel product. The entity may not use funds from non-State Revolving Fund sources, including the entity's own funds, to pay for a non-compliant iron or steel product used in the project.

AIS requirements apply to the following products made primarily of iron or steel, permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings;
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel;
- Reinforced precast concrete; and
- Construction materials.

Mechanical and electrical components, equipment, and systems are not considered iron and steel products, and are exempt from AIS requirements. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

Waivers

AIS provisions permit EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

EPA has granted nationwide waivers, which are attached hereto as **Attachment 5**:

1. De Minimis waiver pursuant to Section 436 of P.L. 113-76, Consolidated Appropriations Act (CAA) (April 15, 2014). The De Minimis waiver permits the use of products when they occur in de minimis incidental components to the project. Funds used for de minimis incidental components cumulatively may not exceed 5% of the total cost of the materials used in and incorporated into the project; the cost of an individual item may not exceed 1% of the total cost of materials used in and incorporated into the project.

2. Nationwide Plans and Specs waiver pursuant to Section 436 of P.L. 113-76, Consolidated Appropriations Act (CAA) (April 15, 2014)

3. Short-Term National Product Waiver for Stainless Steel Nuts and Bolts used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles (February 18, 2015)

4. National Product Waiver for Pig Iron and Direct Reduced Iron (February 18, 2015)

5. National Product Waiver for Minor Components in Iron and Steel Products (with Cost Ceiling) (October 27, 2015)

6. One-Year Extension of the Short-Term National Product Waiver for Stainless Steel Nuts and Bolts Used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles (February 22, 2016)

7. One-year Extension of the Short-Term National Product Waiver for Stainless Steel Nuts and Bolts Used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles (January 18, 2017)

8. Final Extension of the Short-Term National Product Waiver for Stainless Steel Nuts and Bolts Used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles (August 24, 2018)

EPA's American Iron and Steel webpage includes any waivers issued - https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement

Waiver Process

EPA has implemented a waiver application process to allow the State, on behalf of the applicant, to apply for waivers of the AIS requirement directly to EPA Headquarters. Only waiver requests received from the State will be considered. A waiver application may be submitted at any time during the project, however until a waiver is granted by EPA, the AIS requirement stands.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the TWDB project engineer. Proper and sufficient documentation must be provided by the assistance recipient.

After receiving an application for waiver of the AIS requirements, EPA Headquarters will publish the request on its website for 15 days and receive informal comment. EPA Headquarters will then determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.

EPA will notify TWDB that a waiver request has been approved or denied as soon as such a decision has been made. Approved waivers will be posted on the EPA website. The applicant should keep a copy of the signed waiver in their AIS Certification File.

Compliance

In order to ensure compliance with the AIS requirement, specific AIS contract language must be included in each contract, including the construction material purchase agreements. The applicant should be aware that AIS requirements will apply to the project through the TWDB commitment resolution.

It is the applicant's responsibility to assure that all construction and purchase contracts are executed in compliance with AIS, and a record of all forms and certifications necessary to demonstrating compliance with AIS is maintained. To demonstrate compliance with AIS requirements either the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes occurred in the United States, or the applicant may use step certification process, similar to the Federal Highway Administration. The applicant is also responsible for monitoring De Minimis Logs to ensure all iron and steel products listed on the log meet the requirements of the EPA's De Minims waiver.

TWDB relies on self-certification by the applicant to document compliance with AIS, and requires the applicant to submit a Monthly American Iron and Steel Certificate of Compliance Submittal with each outlay report covering requests for funds associated within construction contracts. Failure to submit the Monthly American Iron and Steel Certificate of Compliance could delay the release of funds.

TWDB Compliance Procedures

In order to be in compliance and satisfy TWDB's requirements for implementation of AIS requirements, entities will need to do the following:

1. The applicant shall prepare and submit any waiver request to the TWDB project engineer. TWDB will forward all requests to EPA. Any waiver to the AIS requirements must be issued by the EPA. A checklist detailing the types of information required for a waiver to be

processed, and EPA's waiver determination checklist is attached as **Attachment 6**.

2. Applicants shall include the following language in the advertisement for bids for all applicable construction contracts funded by the TWDB's DWSRF or CWSRF:

   For CWSRF, include - Any contract(s) awarded under this Invitation for Bids is/are subject to the American Iron and Steel (AIS) requirements of Section 608 of the Federal Water Pollution Control Act (33 U.S.C. §1388)."

   For DWSRF, include - "Any contract(s) awarded under this Invitation for Bids is/are subject to the American Iron and Steel (AIS) requirements of federal law, including federal appropriation acts and Section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. §300j-12(a)(4)), as applicable."

3. Applicants shall include the AIS requirements in all applicable construction contracts, which are attached as **Attachment 7**.

4. Applicants shall include the following language on the General Notes Plan Sheet(s).

   For CWSRF, include - "This project is subject to the American Iron and Steel (AIS) requirements of Section 608 of the Federal Water Pollution Control Act (33 U.S.C. §1388). All iron and steel products for construction, alteration, maintenance, or repairs incorporated in these plans must be produced in the United States"

   For DWSRF, include - "This project is subject to the American Iron and Steel (AIS) requirements of federal law, including federal appropriation acts and Section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. §300j-12(a)(4)), as applicable. All iron and steel products for construction, alteration, maintenance, or repairs incorporated in these plans must be produced in the United States"

5. The applicant and prime construction contractor must obtain certifications from the final manufacturer that delivers the iron and steel product to the worksite, vendor, or contractor asserting that all manufacturing processes occurred in the United States (Version 1 of the sample letter on page 26). For products not delivered to the project site, the applicant and prime contractor must obtain the Final Manufacturer's certification from the supplier (Version 2 of the sample letter on page 27). The supplier must certify that the projects being provided to the contractor for the project are AIS compliant and the contractor and applicant must retain copies of the supplier's certification. Note: EPA has determined that a comparable manufacturer's certification letter that makes reference to the USDA Rural Utilities Service Water and Environmental Programs' American Iron & Steel requirements instead of EPA's AIS requirements would be acceptable.

6. The prime construction contractor and applicant are responsible for inspecting iron and steel products for any readily visible identification labels indicating the country of origin.

7. The prime construction contractor and applicant will be required to maintain a file that contains the certifications from the final manufacturers, any approved waivers, and the De Minimis log. This file must be available for review by TWDB representatives. Sample Certification letters, step certification log, and De Minimis Log are included in **Attachment 8.**

8. The applicant must submit a Monthly American Iron and Steel Certificate of Compliance Submittal with each outlay report requesting funds associated with construction contracts (i.e., covering construction-related invoices), attached as **Attachment 9.**

9. The applicant will provide a final certification, after the completion of the construction contract and prior to issuance of a Certificate of Approval by the TWDB, stating the project was completed in compliance with the AIS requirements, **Attachment 10**.

Recommendations and Best Management Practices

The following recommendations are not required but should be considered by the applicant in implementation of the AIS requirements:

1. AIS requirements should be addressed in the engineering feasibility study to determine availability of AIS products, and determine if any requests for waivers need to be initiated.

2. While a waiver application may be submitted at any time during the project, the applicant should consider EPA's review schedule (15-day comment period plus review time) when scheduling projects. It is not recommended to request a waiver after the advertisement for bids or start of construction unless absolutely necessary.

3. Develop procedures for maintaining a record of AIS documentation.

4. Distinguish separate bid items that must comply with AIS requirements on the Bid Form.

5. Consideration of AIS compliance documentation when developing the contractor submittal procedures for shop drawings, material lists, and manufacturer certifications, etc.

6. Discuss AIS requirements during pre-bid conference and pre-construction meetings, to address contractor's responsibilities, and availability of iron and steel products needed to complete the project.

Attachment 1 - American Iron and Steel Requirement Guidance (March 20, 2014)
(Double click on the embedded Acrobat version below for a clear copy of the entire document)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 20 2014

OFFICE OF WATER

MEMORANDUM

SUBJECT: Implementation of American Iron and Steel provisions of P.L. 113-76, Consolidated Appropriations Act, 2014

FROM: Andrew D. Sawyers, Director
Office of Wastewater Management (4201M)

Peter C. Grevatt, Director
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors
Regions I - X

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an "American Iron and Steel (AIS)" requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Federal Fiscal Year 2014.

Section 436 also sets forth certain circumstances under which EPA may waive the AIS requirement. Furthermore, the Act specifically exempts projects where engineering plans and specifications were approved by a State agency prior to January 17, 2014.

The approach described below explains how EPA will implement the AIS requirement. The first section is in the form of questions and answers that address the types of projects that must comply with the AIS requirement, the types of products covered by the AIS requirement, and compliance. The second section is a step-by-step process for requesting waivers and the circumstances under which waivers may be granted.

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Attachment 2 - Questions and Answers Part 1: Valves and Hydrants (May 30, 2014, updated October 27, 2015)

(Double click on the embedded Acrobat version below for a clear copy of the entire document)

May 30, 2014

American Iron & Steel (AIS) Requirement of the Consolidated Appropriations Act of 2014 (Public Law 113-76) Q&A Part 1: Valves and Hydrants

Q1: Does the AIS requirement of the Consolidated Appropriations Act of 2014 require minor, miscellaneous components within a covered valve or hydrant, such as nuts, bolts and washers, to be made in the U.S.?

A1: The definition of "iron and steel products" that must either be domestically produced or subject to a waiver in order to comply with the AIS requirement of the Consolidated Appropriations Act of 2014

Question 1 has been superseded by the *National Minor Components* Waiver signed on October 27, 2015. This waiver can be found here: *https://www.epa.gov/sites/production/files/2015-10/documents/minor_components_waiver_signed_10_27_15_508.pdf*

products that must either be made domestically, or otherwise must comply with the AIS requirement. The minor components represent a very small percentage of the iron and steel in the hydrants and valves that are defined as "iron and steel products." These minor components, which EPA has learned through our research are currently difficult to find domestically in sufficient quantity, such as minor nuts, bolts, and washers, are not required to be of U.S. origin.

Q2: Do the actuators/control systems attached to valves have to comply with the AIS requirement, or just the valve itself?

A2: The AIS requirement of the Consolidated Appropriations Act of 2014 includes valves in its definition of "iron and steel products" that recipients must make certain are either domestically made or subject to a waiver in order to comply with the AIS requirement. Actuators and control systems are not included in the definition. Only the valve itself is required to be either domestically produced or subject to a waiver in order to be compliant with the AIS requirement. Absent a waiver, EPA considers valves and hydrants to be domestically produced if the significant iron and steel components of a covered valve or hydrant – the body, bonnet, shoe, stem, and wedge/disc/gate/ball – if made of iron or steel, is produced in the U.S. See Q1 above for a discussion about minor components. The valves and actuators, while often purchased and shipped together, are two unique products that are manufactured separately and typically attached together during the final step of the process. Valves are included in the definition of "iron and steel products" in the AIS requirement. Actuators, whether manual, electric, hydraulic or pneumatic, are not listed as an "iron and steel product" under the AIS requirement of the Consolidated Appropriations Act of 2014, nor are they considered construction materials. Therefore, they do not need to be domestically produced in the U.S. in order to comply with the requirement.

1 of 2

Attachment 3 - Questions and Answers Part 2: Products, Projects and Process (September 10, 2014)

(Double click on the embedded Acrobat version below for a clear copy of the entire document)

September 10, 2014

American Iron & Steel (AIS) Requirement of the Consolidated Appropriations Act of 2014 (Public Law 113-76)

Q&A Part 2

PRODUCT QUESTIONS

1. **Q: Do all fasteners qualify for de minimis exemption?**

   A: No. There is no broad exemption for fasteners from the American Iron and Steel (AIS) requirements. Significant fasteners used in SRF projects are not subject to the de minimis waiver for projects and must comply with the AIS requirements. Significant fasteners include fasteners produced to industry standards (e.g., ASTM standards) and/or project specifications, special ordered or those of high value. When bulk purchase of unknown-origin fasteners that are of incidental use and small value are used on a project, they may fall under the national de minimis waiver for projects. The list of potential items could be varied, such as big-box/hardware-store-variety screws, nails, and staples. The key characteristics of the items that may qualify for the de minimis waiver would be items that are incidental to the project purpose (such as drywall screws) and not significant in value or purpose (such as common nails or brads). See the following: http://water.epa.gov/grants_funding/upload/Deminimis-Waiver-04-15-14.pdf.

   EPA also clarifies that minor components of two listed products – valves and hydrants – may not need to meet the AIS requirements if the minor components compromise a very small quantity of minor, low-cost fasteners that are of unknown origin. See EPA's questions and answers on the subject at the following: http://water.epa.gov/grants_funding/upload/AIS-QandA-Part-1-Valves-and-Hydrants-final.pdf.

2. **Q: Does PCCP pipe have to be domestically produced?**

   A: Yes. Pre-stressed concrete cylinder pipe (PCCP) or other similar concrete cylinder pipes would be comparable to pre-cast concrete which is specifically listed in the Consolidated Appropriations Act of 2014 as a product subject to the AIS requirement.

3. **Q: If the iron or steel is made from recycled metals will the vendor/supplier have to provide a certification document certifying that the recycled metals are domestically produced?**

   A: No. Recycled source materials used in the production of iron and steel products do not have to come from the U.S. Iron or steel scrap, for instance, are considered raw materials that may come from anywhere. While certification is not required for the raw material, EPA does recommend that additional final processing of iron and steel be certified to have occurred in the U.S.

4. **Q: Do tanks used for filtration systems, if delivered to the construction site separately and then filled with filtration media onsite, have to be domestically produced?**

Attachment 4 - Questions and Answers Part 3: Plans and specifications dates, Refinancing and Coatings
(March 16, 2015)
(Double click on the embedded Acrobat version below for a clear copy of the entire document)

March 2015

American Iron & Steel Requirement for the Clean Water and Drinking Water State Revolving Funds

Q&A Part 3

*For CWSRF and DWSRF: On **January 17, 2014**, Public Law 113-76, the "Consolidated Appropriations Act, 2014," was enacted and included an American Iron and Steel requirement for the Clean Water and Drinking Water State Revolving Fund programs through the end of fiscal year 2014. Since then, the AIS requirement has continued for both programs, but through different statutes, with a few changes as described in the questions and answers provided below.*

*For CWSRF: On **June 10, 2014**, the Water Resources Reform and Development Act amended the Clean Water Act to include permanent requirements for the use of AIS products in CWSRF assistance agreements. Section 608 of the CWA now contains requirements for AIS that repeat those of the Consolidated Appropriations Act, 2014. All CWSRF assistance agreements must comply with Section 608 of the CWA for implementation of the permanent AIS requirement.*

*For DWSRF: On **December 16, 2014**, the President signed Public Law 113- 235, the "Consolidated and Further Continuing Appropriations Act, 2015," which provides fiscal year 2015 full-year appropriations through September 30, 2015. This law continues the requirement for the use of AIS products in DWSRF assistance agreements through September 30, 2015.*

CWSRF PROGRAM

1. **Q: The Water Resources Reform and Development Act amended the Clean Water Act to include permanent requirements for the use of AIS for CWSRF funded assistance agreements. Does the CWA include an exemption for plans and specifications approved prior to the enactment of the legislation similar to the exemption included in the Consolidated Appropriations Act (CAA) 2014?**

   A: Yes. The WRRDA amendment to the CWA, which included AIS requirements, included a similar exemption as the CAA 2014. For any CWSRF assistance agreement signed on or after October 1, 2014, if the plans and specifications were approved prior to June 10, 2014 (the enactment of WRRDA), then the project is exempt from AIS requirements. For assistance agreements signed prior to October 1, 2014, the previous dates in the CAA 2014 apply (see March 20, 2014, AIS guidance document).

   If a project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the plans and specifications approval date for purposes of this exemption in Section 608 (f).

   The following table summarizes AIS exemptions based on the plans and specifications approval date for CWSRF funded projects.

Attachment 5 – EPA Approved Waivers

a. De Minimis waiver pursuant to Section 436 of P.L. 113-76, Consolidated Appropriations Act (CAA) (April 15, 2014)

(Double click on the embedded Acrobat version below for a clear copy of the entire document).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF WATER

DECISION MEMORANDUM

SUBJECT: De Minimis Waiver of Section 436 of P.L. 113-76, Consolidated Appropriations Act (CAA), 2014

FROM: Nancy K. Stoner
Acting Assistant Administrator

The EPA is hereby granting a nationwide waiver pursuant to the "American Iron and Steel (AIS)" requirements of P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), section 436 under the authority of Section 436(b)(1) (public interest waiver) for de minimis incidental components of eligible water infrastructure projects. This action permits the use of products when they occur in de minimis incidental components of such projects funded by the Act that may otherwise be prohibited under section 436(a). Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project; the cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into a project.

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an "American Iron and Steel" (AIS) requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use specific domestic iron and steel products that are produced in the United States if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Fiscal Year 2014, unless the agency determines it necessary to waive this requirement based on findings set forth in Section 436(b). The Act states, "[the requirements] shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency…finds that— (1) applying subsection (a) would be inconsistent with the public interest" 436(b)(1).

In implementing section 436 of the Act, the EPA must ensure that the section's requirements are applied consistent with congressional intent in adopting this section and in the broader context of the purposes, objectives, and other provisions applicable to projects funded under the SRF. Water infrastructure projects typically contain a relatively small number of high-cost components incorporated into the project. In bid solicitations for a project, these high-cost components are generally described in detail via project specific technical specifications. For these major components, utility owners and their contractors are generally familiar with the conditions of availability, the potential alternatives for each detailed specification, the approximate cost, and the country of manufacture of the available components.

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b. Nationwide Plans and Specs waiver pursuant to Section 436 of P.L. 113-76, Consolidated Appropriations Act (CAA) (April 15, 2014)
(Double click on the embedded Acrobat version below for a clear copy of the entire document)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

DECISION MEMORANDUM

SUBJECT: Plans and Specifications Waiver of Section 436 of P.L. 113-76, Consolidated Appropriations Act (CAA), 2014

FROM: Nancy K. Stoner
Acting Assistant Administrator

The EPA is hereby granting a nationwide waiver of the American Iron and Steel requirement pursuant to Section 436(b)(1) (public interest waiver), of the Consolidated Appropriations Act (CAA), 2014, for eligible projects that had engineering plans and specifications submitted to an appropriate state agency prior to and including January 17, 2014, the date of enactment of the CAA, and approved between and including January 17, 2014, and the date of this waiver, where the state agency that approved such plans and specifications did so under the normal course of business for that agency. This action permits the use of non-domestic iron and steel products in such projects funded by a Clean or Drinking Water State Revolving Fund that may otherwise be prohibited under section 436.

If a project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the plans and specifications approval date for purposes of this national waiver.

The basis for the nationwide waiver is that due to the uncertainty about whether an American Iron and Steel requirement would be included in this year's appropriation, potential assistance recipients did not have the opportunity to plan for a possible American Iron and Steel requirement. Until detailed guidance was issued, potential assistance recipients were unable to solicit bids from construction firms with appropriate definitions of key terms contained in the CAA language. Additionally, projects that submitted engineering plans and specifications prior to and including January 17, 2014, without knowledge of the American Iron and Steel requirement, and with the anticipation that such plans would be quickly approved, but such approval did not occur until on or after January 17, 2014, would be required to redesign elements of the project, investigate potential domestic products, revise engineering drawings and bid specifications, and resubmit such plans and specifications for approval, thereby delaying the initiation of construction substantially. Those projects which do not require approved plans and specifications, but were bid prior to the guidance being issued, also could be required to rebid the project or submit change orders to comply with the new requirements, which would also delay initiation of construction.

1

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c. Short-Term National Product Waiver for Stainless Steel Nuts and Bolts used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles (February 18, 2015)
(Double click on the embedded Acrobat version below for a clear copy of the entire document)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 18 2015 OFFICE OF WATER

DECISION MEMORANDUM

SUBJECT: Short-Term National Product Waiver for Stainless Steel Nuts and Bolts used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles for State Revolving Fund Projects

FROM: Kenneth J. Kopocis
Deputy Assistant Administrator

The U.S. Environmental Protection Agency is hereby granting a national product waiver pursuant to the "American Iron and Steel" provisions of the Clean Water Act and Public Law 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015."[1] The waiver permits the use of non-domestically produced stainless steel nuts and bolts in bolting-type pipe couplings, restraints, joints, flanges and repair saddles in iron and steel products for projects funded by a Clean Water or Drinking Water State Revolving Fund that may otherwise be prohibited absent this waiver. This national product waiver is short-term, applying to the covered products if those products are purchased up until one year after the waiver's signature date. The waiver is retroactive and also applies to products purchased before the signature date. Covered products purchased prior to the waiver's signature date or within the one-year period may be used subsequent to the waiver expiration date.

Coverage: The specific product categories covered by this waiver include bolted expansion joints, bolted dismantling joints, bolted pipe couplings, bolted pipe restraints, bolted pipe flanges, bolted flange adapters, bolted pipe repair or service saddles, bolted mechanical joints, and pipe hangers and supports. Non-domestic stainless steel nuts and bolts may be incorporated into these specific products; however, all other iron and steel components in these products, unless subject to a waiver, must still meet the AIS requirements. In other words, this waiver does not exempt the whole product, or any of the main iron or steel components such as the ring, sleeve, body, flange spool or mechanical joint, from the AIS requirements just because stainless steel nuts and bolts are used. Any project that receives funds from the CWSRF or DWSRF since the enactment of P.L. 113-76, the "Consolidated Appropriations Act, 2014," is required to comply with the AIS provisions.

[1] Absent a waiver, all treatment works and drinking water facilities that are constructed, in whole or in part, with funds from the CWSRF or the DWSRF, must use American made iron and steel. EPA is allowed under certain circumstances to provide waivers of this requirement.

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d. National Product Waiver for Pig Iron and Direct Reduced Iron (February 18, 2015)
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 18 2015

OFFICE OF WATER

DECISION MEMORANDUM

SUBJECT: National Product Waiver for Pig Iron and Direct Reduced Iron for State Revolving Fund Projects

FROM: Kenneth J. Kopocis
Deputy Assistant Administrator

The U.S. Environmental Protection Agency is hereby granting a national product waiver pursuant to the "American Iron and Steel" provisions of the Clean Water Act and Public Law 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015," for certain intermediate goods used in the manufacture of iron and steel products.[1] This waiver permits the use of pig iron and direct reduced iron manufactured outside of the United States in domestic manufacturing processes for iron and steel products used in projects funded by a Clean Water or Drinking Water State Revolving Fund that may otherwise be prohibited absent this waiver. The waiver is retroactive and thus also applies to the use of non-domestic pig iron and direct reduced iron before the signature date.

Background: Pig iron and direct reduced iron are intermediate products of iron and steel manufacturing used as material feed sources in iron and steel foundries and steel mills. Pig iron is a product of iron ore smelting in a blast furnace. It is made from molten iron, which has been cast in the shape of "pigs" as it comes from the blast furnace. Direct reduced iron ore is produced from iron ore, pellets or fines, which are reduced in a solid state using natural gas. Hot briquetted iron, or HBI, is a compacted form of direct reduced iron with enhanced physical characteristics for shipment and storage.

Coverage: This waiver permits the use of iron and steel products that were manufactured using non-domestic pig iron and direct reduced iron in projects that receive funds from either the CWSRF or DWSRF. Any project that received or will receive funds from the CWSRF or DWSRF beginning with the enactment of P.L. 113-76, the "Consolidated Appropriations Act, 2014," may use this waiver for iron and steel that use these intermediate goods.

Rationale: The AIS provisions require CWSRF and DWSRF assistance recipients to use specific domestic iron and steel products that are produced in the United States if the project is funded

[1] Absent a waiver, all treatment works and drinking water facilities that are constructed, in whole or in part, with funds from the CWSRF or the DWSRF, must use American made iron and steel. EPA is allowed under certain circumstances to provide waivers of this requirement.

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e. National Product Waiver for Minor Components in Iron and Steel Products (with Cost Ceiling) (October 27, 2015)

(Double click on the embedded Acrobat version below for a clear copy of the entire document)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 27 2015

OFFICE OF WATER

DECISION MEMORANDUM

SUBJECT: National Product Waiver for Minor Components within Iron and Steel Products (with Cost Ceiling) for State Revolving Fund Projects

FROM: Kenneth J. Kopocis
Deputy Assistant Administrator

The U.S. Environmental Protection Agency is hereby granting a national product waiver pursuant to the "American Iron and Steel" provisions of the Clean Water Act and Public Law 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015," (hereinafter referred to as "the Acts") for minor components within a product under an established cost ceiling.[1] The waiver will permit projects funded by the Clean Water State Revolving Fund or Drinking Water State Revolving Fund to use non-domestically produced miscellaneous minor components within an otherwise domestically produced iron and steel product for up to 5 percent of the total material cost of the product. These products could be prohibited absent this waiver. This waiver is retroactive, and so also applies to products purchased before the signature date of this waiver.

Coverage: The items covered by this waiver include miscellaneous minor components within iron and steel products as defined in the AIS provisions of the Acts. The specific minor components in covered iron and steel products will vary by product and manufacturer. Pursuant to this waiver, non-domestically produced miscellaneous minor components comprising up to 5 percent of the total material cost of an otherwise domestically produced iron and steel product may be used. This waiver does not exempt the whole product from the AIS requirements, and the primary iron or steel components of the product must be produced domestically. Unless subject to a separate waiver, all other iron and steel components in these products must still meet the AIS requirements. Valves and hydrants are also subject to the cost ceiling requirements described here. This waiver supersedes the EPA's previous guidance issued on May 30, 2014, (Question 1) related to minor components in valves and hydrants.

The coverage of this waiver is different from that of the existing national de minimis waiver. While the national de minimis waiver covers entire products (when those products are generally of low cost and incidental to the construction of the project), this waiver covers minor components within an iron and steel product. In addition, the national de minimis waiver is intended for assistance recipients to use for their projects, while this minor components waiver is intended to allow manufacturers to certify that their products comply with the AIS requirements.

[1] Absent a waiver, all treatment works and drinking water facilities that are constructed, in whole or in part, with funds from the CWSRF or the DWSRF, must use American made iron and steel. The EPA is allowed under certain circumstances to provide waivers of this requirement.

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f. One-Year Extension of the Short-Term National Product Waiver for Stainless Steel Nuts and Bolts Used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles (February 22, 2016)
(Double click on the embedded Acrobat version below for a clear copy of the entire document)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 22 2016

OFFICE OF WATER

DECISION MEMORANDUM

SUBJECT: One-Year Extension of the Short-Term National Product Waiver for Stainless Steel Nuts and Bolts used in Pipe Couplings, Restraints, Joints, Flanges and Saddles for State Revolving Fund Projects

FROM: Joel Beauvais
Deputy Assistant Administrator

The U.S. Environmental Protection Agency hereby grants a one-year extension of the Short-Term National Product Waiver for Stainless Steel Nuts and Bolts used in Pipe Couplings, Restraints, Joints, Flanges and Saddles for State Revolving Fund Projects, pursuant to the "American Iron and Steel" requirements of the Clean Water Act Section 608 and P.L. 114-113, the "Consolidated Appropriations Act, 2016." The original waiver was signed on February 18, 2015. With the one-year extension, the waiver will expire February 18, 2017. This waiver permits the use of non-domestically produced stainless steel nuts and bolts in bolting-type pipe couplings, restraints, joints and repair saddles in iron and steel products for projects funded by a Clean Water or Drinking Water State Revolving Fund that may otherwise be prohibited absent this waiver.

The original, approved waiver (attached) provides details regarding the specific types of products covered by this waiver as well as the rationale for issuance of the original waiver. This national product waiver extension is short-term, applying to the covered products if those products are purchased up until February 18, 2017.

Rationale: The EPA reassessed the market for and supply of stainless steel nuts and bolts for the products of interest and was unable to gather sufficient evidence that there is an adequate domestic supply of stainless steel nuts and bolts for the subject products. Through the research effort, the agency found that the domestic supply of stainless steel nuts and bolts has increased since fall 2014 and there may be manufacturers that have the capability to meet the demand for stainless steel nuts and bolts. However, manufacturers were generally unable, or unwilling, to provide information about their production capacity. The agency did not receive evidence that there is an adequate national availability of stainless steel nuts and bolts.

In addition, the agency received five responses from manufacturers and suppliers after posting a draft version of this Decision Memorandum during a 15-day public comment period. Most comments were in favor of the waiver extension. Comments in support of the waiver extension claimed a remaining significant shortage in the supply of stainless steel nuts and bolts.

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g. One-year Extension of the Short-Term National Product Waiver for Stainless Steel Nuts and Bolts Used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles (January 18, 2017)
(Double click on the embedded Acrobat version below for a clear copy of the entire document)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 18 2017

OFFICE OF WATER

DECISION MEMORANDUM

SUBJECT: One-Year Extension of the Short-Term National Product Waiver for Stainless Steel Nuts and Bolts used in Pipe Couplings, Restraints, Joints, Flanges and Saddles for State Revolving Fund Projects

FROM: Michael H. Shapiro
Deputy Assistant Administrator

The U.S. Environmental Protection Agency hereby grants a one-year extension of the Short-Term National Product Waiver for Stainless Steel Nuts and Bolts used in Pipe Couplings, Restraints, Joints, Flanges and Saddles for State Revolving Fund Projects, pursuant to the "American Iron and Steel" requirements of the Clean Water Act Section 608 and Public Law 114-254, the "Further Continuing and Security Assistance Appropriations Act, 2017." The original waiver was signed on February 18, 2015 and was granted a one-year extension on February 22, 2016. With this additional one-year extension, the waiver will expire February 18, 2018. This waiver permits the use of non-domestically produced stainless steel nuts and bolts in bolting-type pipe couplings, restraints, joints and repair saddles in iron and steel products for projects funded by a Clean Water or Drinking Water State Revolving Fund that may otherwise be prohibited absent this waiver.

The original, approved waiver (attached) provides details regarding the specific types of products covered by this waiver as well as the rationale for issuance of the original waiver. This national product waiver extension is short-term, applying to the covered products if those products are purchased up until February 18, 2018.

Rationale: In 2016, the EPA reassessed the market for and supply of stainless steel nuts and bolts for the products of interest and was unable to gather sufficient evidence that there is an adequate domestic supply of these products. Through the research effort, the agency found that the domestic supply of stainless steel nuts and bolts for the subject products has increased slightly since fall 2015. The EPA received anecdotal evidence from a few manufacturers that they increased their supply of stainless steel nuts and bolts used in the subject products by small amounts, but the slight increase does not represent a significant change in the manufacturing capacity of the domestic products. Furthermore, the domestic supply of the stainless steel nuts and bolts is not readily quantifiable because manufacturers were generally unable, or unwilling, to provide information about their production capacity. In addition, the agency received no responses from manufacturers and suppliers after posting a draft version of this Decision Memorandum during a 15-day public comment period.

Lacking evidence that manufacturers of stainless steel nuts and bolts used in the subject products can meet current demands, the agency is extending the national waiver for another year. Prior to the

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h. Final Extension of the Short-Term National Product Waiver for Stainless Steel Nuts and Bolts Used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles (August 24, 2018)
(Double click on the embedded Acrobat version below for a clear copy of the entire document)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 2 4 2018

DECISION MEMORANDUM

OFFICE OF WATER

SUBJECT: Final Extension of the Short-Term National Product Waiver for Stainless Steel Nuts and Bolts used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles for State Revolving Fund Projects

FROM: David P. Ross
Assistant Administrator

The U.S. Environmental Protection Agency (EPA) hereby grants an extension of the Short-Term National Product Waiver for Stainless Steel Nuts and Bolts used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles for State Revolving Fund Projects, pursuant to the "American Iron and Steel" (AIS) requirements of the Clean Water Act. The original waiver was signed on February 18, 2015, and was granted a one-year extension on February 22, 2016. A second extension was granted until February 18, 2018. With this third and final extension, the waiver will retroactively cover nuts and bolts purchased since February 18, 2018, and be extended 18 months from the signing date of this waiver (sunset date). This waiver will not be renewed after the sunset date. This waiver permits the purchase and use of non-domestically produced stainless steel nuts and bolts in bolting-type pipe couplings, restraints, joints, and repair saddles in iron and steel products for projects funded by a Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) that may otherwise be prohibited absent this waiver.

The original, approved waiver provides details regarding the specific types of products covered by and the rationale for issuance of the waiver (see: https://www.epa.gov/sites/production/files/2015-09/documents/short-term-natl-waiver-for-ss-nuts-bolts-021815.pdf). This national product waiver extension is short-term, applying to the covered products if those products are purchased by the assistance recipient or their representatives (i.e. construction contractor) up until the sunset date.

The EPA is granting this national product waiver extension on a short-term basis in order to provide the time U.S. manufacturers need to increase the domestic production of the specified stainless steel nuts and bolts. Upon the production of these parts, the EPA stands ready to provide assistance to states and others to help identify AIS compliant products consistent with the April 2017 Buy American and Hire American Executive Order.

Attachments:
1. Rationale and Legal Authority
2. Summary of Comments Received During 15-Day Informal Public Input Period on Short-Term Waiver Extension for Stainless-Steel Nuts and Bolts used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles for State Revolving Fund (SRF) Projects

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Attachment 6: EPA Waiver Request

Information Checklist for Waiver Request

The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	☑	Notes
General • Waiver request includes the following information: o Description of the foreign and domestic construction materials o Unit of measure o Quantity o Price o Time of delivery or availability o Location of the construction project o Name and address of the proposed supplier o A detailed justification for the use of foreign construction materials • Waiver request was submitted according to the instructions in the memorandum • Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor		
Cost Waiver Requests • Waiver request includes the following information: o Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products o Relevant excerpts from the bid documents used by the contractors to complete the comparison o Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers		
Availability Waiver Requests • Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: o Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials o Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers. o Project schedule o Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought Has the State received other waiver requests for the materials described in this waiver request, for comparable projects?		

EPA Checklist for Waiver Request

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Review Items	Yes	No	N/A	Notes
Cost of Waiver Request • Does the waiver request include the following information? o Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products				
o Relevant excerpts from the bid documents used by the contractors to complete the comparison				
o A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market				
• Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%?				
Availability Waiver Requests • Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested? o Supplier information or other documentation indicating availability/delivery date for materials o Project schedule o Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials • Does supporting documentation provide sufficient evidence that the				
• Contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers?				
• Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information)				
• Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include: o Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State o Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States o Correspondence with construction trade associations indicating the non-availability of the materials • Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits?				

Attachment 7: Construction Contract Language

The following language must be included in all construction and purchase contracts associated with a TWDB CWSRF or DWSRF loan:

> The Contractor acknowledges to and for the benefit of the ***Applicant*** ("Purchaser") and the Texas Water Development Board (TWDB) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contactor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the TWDB that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the TWDB. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser to enforce this Agreement and recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the TWDB or any damages owed to the TWDB by the Purchaser). While the Contractor has no direct contractual privity with the TWDB, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the TWDB is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the TWDB.

Attachment 8: Sample Certifications

AIS Certification must document the location of the manufacturing process involved with the production of steel and iron materials. Each handler (supplier, fabricator, manufacturer, processor, etc.) of the iron and steel products and their step in the process must be recorded and certified as domestically performed.

The applicant may utilize either

(1) a Final Manufacturer Certification process, in which the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification identifying all handlers of the iron or steel product, and asserting that all manufacturing processes occurred in the US; or

(2) a Step Certification process in which each handler of the iron or steel product provides a separate certification letter certifying that their step in the process was domestically performed.

Final Manufacturer Certification – Version 1 – AIS Products Delivered to Project Site

The following information is provided as a sample letter of certification for AIS compliance. Documentation must be provided on company letterhead. The Final Manufacturer's Certification should list everyone who has handled the product, starting with the processor of the raw iron or steel through the contractor who installs the final product.

Date

Company Name
Company Address
City, State Zip

Subject: American Iron and Steel Certification for Project (XXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the project site below are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Project Site location (City, State): _____

Project's Prime Contractor Name: _____

List for all Items, Products and/or Materials (Include all the predecessor manufacturing processes before the final manufacturer for each item on the list):

Item 1: _____
Predecessor Manufacturing Process: _____
Manufacturer's Name: _____
Manufacturing location (City, State): _____

Predecessor Manufacturing Process: _____
Manufacturer's Name: _____
Manufacturing location (City, State): _____

Item 2: _____
Predecessor Manufacturing Process: _____
Manufacturer's Name: _____
Manufacturing location (City, State): _____

Predecessor Manufacturing Process: _____
Manufacturer's Name: _____
Manufacturing location (City, State): _____

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the project engineer.

Signed by company representative

Final Manufacturer Certification – Version 2 – AIS Products Purchased from Supplier

The Final Manufacturer's Certification should list everyone who has handled the product, starting with the processor of the raw iron or steel through to the Supplier.

Date

Company Name
Company Address
City, State Zip

Subject: American Iron and Steel Certification for Project (XXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the Supplier listed below are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Supplier: _____
Address: _____

List for all Items, Products and/or Materials (Include all the predecessor manufacturing processes before the final manufacturer for each item on the list):

Item 1: _____
Predecessor Manufacturing Process: _____
Manufacturer's Name: _____
Manufacturing location (City, State): _____

Predecessor Manufacturing Process: _____
Manufacturer's Name: _____
Manufacturing location (City, State): _____

Item 2: _____
Predecessor Manufacturing Process: _____
Manufacturer's Name: _____
Manufacturing location (City, State): _____

Predecessor Manufacturing Process: _____
Manufacturer's Name: _____
Manufacturing location (City, State): _____

If any of the above compliance statements change while providing material to this project we will immediately notify the Supplier.

Signed by company representative

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Step Certification

A step certification is a process under which each handler (supplier, fabricator, manufacturer, processor, etc.) of the iron and steel products certifies that their step in the process was domestically performed. The Step Certification process requires you receive a separate letter from everyone who handles the product, starting with the processor of the raw iron or steel through the contractor who installs the final product.

Step Certification Letter

The following information is provided as a sample letter of step certification for AIS compliance. Documentation must be provided on company letterhead of each handler responsible for that process of the iron or steel product.

Date

Company Name
Company Address
City, State ZIP Code

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for (project site _____ or to _____ company) is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item 1: _____
Manufacturing location (City, State): _____

Item 2: _____
Manufacturing location (City, State): _____

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

Step Certification Log

The following information is provided as a sample log to keep track of step certification for AIS compliance. The TWDB makes no claims regarding the legality of the step certification log with respect to AIS compliance.

American Iron and Steel
Step Certification Log for

_____

(Iron or Steel Product)

Contractor: _____ _____ _____
(Name) (Item)

Supplier: _____ _____ _____
(Name) (Item)

Final Manufacturer: _____ _____ _____
(Name) (Item) (Process)

Predecessor Manufacturer 1: _____ _____ _____
(Name) (Item) (Process)

Predecessor Manufacturer 2: _____ _____ _____
(Name) (Item) (Process)

Processor (e.g., foundry): _____ _____ _____
(Name) (Item) (Process)

De Minimis Log

The following information is provided as a sample De Minimis log for AIS compliance. The TWDB makes no claims regarding the legality of the De Minimis log with respect to AIS compliance.

Figure 1 - Information contained in the log example: Owner Name, Project Name, TWDB SRF Number, Contractor Name, Total Project Cost, Total Material Cost followed by data entered for each of the following categories: Item Number, Iron or Steel Product, Unit Cost, Quantity, Total Cost, Percent of Total Material Cost Less Than One Percent, Cumulative Cost, Percent of Total Material Cost Less Than Five Percent.

American Iron and Steel
de minimis log

Owner Name:	City	Total Project Cost:	$130,000.00
Project Name:	CID 01 - Project	Total Material Cost:	$100,000.00
TWDB SRF No.:	####		
Contractor Name:	Contractor		

Item No.	Iron or Steel Product	Unit Cost	Quantity	Total Cost	% Mat Cost (< 1%)	Cum Cost	% Mat Cost (< 5%)
1	Steel Door	$400.00	1	$ 400.00	0.40%	$ 400.00	0.40%
2	Bolts	$100.00	1	$ 100.00	0.10%	$ 500.00	0.50%
3	Welding rods	$30.00	1	$ 30.00	0.03%	$ 530.00	0.53%
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							

Attachment 9: Monthly American Iron and Steel Certificate

Compliance Submittal by Owner (Sub-Recipient)

TWDB Project No. _____
Loan No. _____

This executed certificate must be submitted with each Outlay report requesting funds associated with construction contracts for all iron and steel products and/or materials included within the project's construction contracts.

I, _____, _____ of
(Name) (Title)
_____ hereby certify that all iron and steel products and/or materials incorporated into the construction, alteration, maintenance, or repair of the subject project are in full compliance with the American Iron and Steel requirements of Section 608 of the Federal Water Pollution Control Act (33 U.S.C. §1388) for the Clean Water State Revolving Fund or federal law, including federal appropriation acts and Section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. §300j-12(a)(4)), as applicable, for the Drinking Water State Revolving Fund, or comply with waivers granted by the U.S. Environmental Protection Agency.

I understand that a false statement herein may subject me to penalties under federal and state laws relating to filing false statements and other relevant statutes.

_____ _____
Signature **Date**

Attachment 10: Final American Iron and Steel Certification

Compliance Submittal by Owner (Sub-Recipient)

TWDB Project No. _____
Loan No. _____

This executed certification must be submitted after the completion of the construction contract and prior to issuance of a Certificate of Approval by the TWDB, stating the project was completed in compliance with the AIS requirements.

I, _____, _____ of
(Name) (Title)
_____ hereby certify that all iron and steel products and/or materials incorporated into the construction, alteration, maintenance, or repair of the subject project were in full compliance with the American Iron and Steel requirements of Section 608 of the Federal Water Pollution Control Act (33 U.S.C. §1388) for the Clean Water State Revolving Fund or federal law, including federal appropriation acts and Section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. §300j-12(a)(4)), as applicable, for the Drinking Water State Revolving Fund, or comply with waivers granted by the U.S. Environmental Protection Agency.

I understand that a false statement herein may subject me to penalties under federal and state laws relating to filing false statements and other relevant statutes.

_____ _____
Signature **Date**

Disadvantaged Business Enterprises for State Revolving Fund Projects

DBE Guidance
TWDB-0210, August 14, 2018

<u>Updates to this guidance include:</u>

- *Fiscal Year 2018 Negotiated Minority Business Enterprise and Women's Business Enterprise (MBE/WBE) Goals (p. 2).*
- *Updated TWDB-0215 (Attachment 1)*
- *Updated TWDB-0217 (Attachment 3)*

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

TWDB-0210 GUIDANCE

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Attachments (examples of required forms):

1. TWDB-0215
2. TWDB-0216
3. TWDB-0217
4. TWDB-0373

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

INTRODUCTION TO FEDERAL REQUIREMENTS

The Texas Water Development Board (TWDB) intends to ensure that applicants, consultants and contractors are provided with information and guidance to successfully meet the U.S. Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) program requirements.

The TWDB's Clean and Drinking Water State Revolving Fund programs receive federal funding from the EPA to provide financial assistance for water and wastewater projects. Recipients of financial assistance (e.g., municipalities, towns, public water systems) and their sub-recipients (e.g., prime consultants, prime contractors, purchase order vendors) are **required** to make a "Good Faith Effort" to award a fair share of work to contractors who are certified as Minority Business Enterprises (MBE) and Women-owned Business Enterprises (WBE) whenever procuring construction, supplies, services, and equipment (40 CFR, Section 33.301). This requirement is currently limited to Clean Water State Revolving Fund Equivalency projects and all Drinking Water State Revolving Fund projects. Recipients of financial assistance are required to show evidence that they have performed the six steps showing a "Good Faith Effort" (referred to as the Six Good Faith Efforts) for all procurements (40 CFR, Section 33.301).

The DBE program is an outreach, education, and goal oriented program designed to increase the participation of MBEs and WBEs in procurements funded by EPA assistance agreements through the State Revolving Funds. The DBE program goals, also referred to as Fair Share Objectives, are negotiated every three years between the TWDB and the EPA. The TWDB's current negotiated fair share goals are:

Category	MBE	WBE
Construction	19.44%	9.17%
Equipment	16.28%	11.45%
Supplies	25.34%	8.82%
Services	20.41%	13.66%

Effective 08/14/2018 – 09/01/2021

The MBE/WBE goals are neither standards nor quotas; they are goals. Recipients of financial assistance are not required to meet the fair share objectives. They must, however, acknowledge that they are aware of and are actively pursuing the fair share objectives with their procurements.

Recipients of financial assistance **must** maintain all records documenting compliance with all applicable federal and state requirements. They are also subject to additional contract administration requirements (40 CFR, Section 33.302).

This guide will cover the Six Good Faith Efforts, procurement instructions, and the TWDB's DBE review process. All of the required DBE forms as well as a few situational examples are included for reference. Clear definitions of all of the terms used throughout the guidance document may be found within the Glossary (Appendix A). The terms "recipient of financial assistance", "applicant", or "entity" may be used interchangeably.

COMPLIANCE WITH THE REQUIREMENTS

Compliance is achieved by: 1) applying the Six Good Faith Efforts to all procurements utilizing applicable State Revolving Fund program funds, 2) submitting TWDB's DBE forms in a timely manner, 3) ensuring all necessary documentation and language is included in bid advertisements and solicitations, and 4) maintaining detailed documents showing compliance with the DBE requirements. In the event that a recipient of financial assistance fails to comply with any of the DBE program requirements, EPA may take remedial action under 40 CFR, Section 33.105. A failure to comply with the DBE process outlined in this guidance document accurately and in a timely manner may also result in the withholding of payments or project delays.

SIX GOOD FAITH EFFORTS

The Six Good Faith Efforts undertaken by a recipient of financial assistance and its prime consultant(s)/contractor(s) ensures that DBE businesses are made aware of procurement opportunities.

According to 40 CFR § 33.301, a recipient of financial assistance is required to complete the following Six Good Faith Efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement:

(1) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(2) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(3) Consider in the contracting process whether businesses competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(4) Encourage contracting with a consortium of DBEs when a contract is too large for one of these businesses to handle individually.

(5) Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce.

(6) If the Prime Contractor awards subcontracts, require the prime contractor to take the complete steps (1) through (5) listed above.

Note: Step-by-step guides are available in future sections of this guidance to explain these six steps (pp. 7-15).

WHEN TO SUBMIT

Recipients of financial assistance through the SRF Programs will be required to submit DBE documentation at different phases during the project's lifecycle (Application, Prior to Closing, Release of Planning/Design funds, and Construction Contract Phases). *Note: Submitting DBE forms to the TWDB alone will not meet EPA's fair share policy. Review the section, Required Documentation, for the additional steps that **must** be completed.*

Application (must be submitted with a financial application)

- **TWDB-0215 (from Applicant/Entity)** certifies that the entity understands they **must** follow the Six Good Faith Efforts and attempt to meet the Fair Share Objectives for MBE/WBE participation.

Prior to Closing (must be submitted, reviewed and approved by TWDB staff prior to closing)

- **TWDB-0216 (from Applicant/Entity)** identifies the methods of solicitation used for procurements, all businesses directly solicited for procurement (at this stage, typically the Financial Advisor, Bond Counsel, and Engineer), their contact information, and their MBE/WBE status.
- **TWDB-0373 (from Applicant/Entity)** identifies the businesses awarded a contract, their contact information, their MBE/WBE status, an actual or anticipated executed contract date, and contract amount. *Note: Any businesses operating as brokers may not be listed on the TWDB-0373 as an MBE or WBE.*[1]
- **TWDB-0217 (from Prime Consultants)** certifies that the Prime Consultant (at this stage, typically the Financial Advisor, Bond Counsel, and Engineer) understand they **must** follow the Six Good Faith Efforts and attempt to meet the Fair Share Objectives for MBE/WBE participation.

Release of Planning/Design Phase funds

- **TWDB-0216 (from Applicant/Entity)** identifies the methods of solicitation used for procurements, all businesses directly solicited for procurement, their contact information, and their MBE/WBE status. This form is required at this stage only, if the entity pursues procuring additional businesses (e.g., Environmental, Other Legal Services, Surveying) for construction (if applicable), equipment, services, or supplies after closing.
- **TWDB-0373 (from Applicant/Entity)** identifies the businesses awarded a contract, their contact information, their MBE/WBE status, an actual or anticipated executed contract date, and contract amount. This form is required, at this step only, if the entity pursues procuring additional businesses (e.g., Environmental, Other Legal Services, Surveying) for construction (if applicable), equipment, services, or supplies after closing. *Note: Any businesses operating as brokers may not be listed on the TWDB-0373 as an MBE or WBE.*[1]
- **TWDB-0216 (from Prime Consultants/Contractors)** indicates all businesses solicited for procurement, their contact information, and their MBE/WBE status.

[1] *A broker is a business that does not perform, manage, or supervise the work of its sub/contract in a manner consistent with the normal business practices for sub/contractors in its line of business.*

- **TWDB-0373 (from Prime Consultants/Contractors)** identifies all businesses awarded a subcontract, their contact information, their MBE/WBE status, an actual or anticipated executed contract date, and contract amount. *Note: Any businesses operating as brokers may not be listed on the TWDB-0373 as an MBE or WBE.* [2]

Construction Contracts

- **TWDB-0216 (from Applicant/Entity)** identifies the methods of solicitation used for procurements, all businesses directly solicited for procurement (at this stage, typically a construction contractor), their contact information, and their MBE/WBE status.
- **TWDB-0373 (from Applicant/Entity)** identifies the businesses awarded a contract, their contact information, their MBE/WBE status, an actual or anticipated executed contract date, and contract amount.
- **TWDB-0216 (from Prime Consultants/Contractors)** indicates all businesses solicited for procurement, their contact information, and their MBE/WBE status.
- **TWDB-0217 (from Prime Contractor)** certifies that the Prime Contractor understands they **must** follow the Six Good Faith Efforts and attempt to meet the Fair Share Objectives for MBE/WBE participation.
- **TWDB-0373 (from Prime Contractor)** identifies all businesses awarded a contract, their contact information, their MBE/WBE status, an actual or anticipated executed contract date, and contract amount. *Note: Any businesses operating as brokers may not be listed on the TWDB-0373 as an MBE or WBE.* [2]

REQUIRED DOCUMENTATION

In addition to the forms that **must** be submitted to the TWDB for review and approval prior to a project progressing through its lifecycle, recipients of financial assistance are required to maintain the following sets of documents or files related to the DBE program for the duration of the project:

- All copies of advertisements, solicitation postings, and communications to publish public solicitation including publishers' affidavits, U.S. certified mail receipts, and emails.
- Bidder's List(s) of Prime Contracts if procurement was through an open-competitive bidding process.
- All forms submitted to the TWDB and the EPA for the DBE program.
- All documentation submitted by the Prime Consultant(s) and Contractor(s) depicting their compliance with EPA's fair share policy (review the section, Procurement Steps, for more details).

SPECIAL CIRCUMSTANCES

In some circumstances, a recipient of financial assistance may not be able to make a good faith effort in procuring DBEs. If this circumstance is encountered, communication with the TWDB's DBE Coordinator should take place well in advance of making the decision to execute a procurement/contract not following the TWDB's DBE program. The DBE Coordinator will determine whether the circumstance may quality for a **sole-source** method of procurement. The sole-source method requires that the recipient of financial assistance produce a letter explaining why they were unable to follow the DBE program, submit the documentation to the TWDB for official review, and retain a copy of the letter within the project file.

[2] *A broker is a business that does not perform, manage, or supervise the work of its sub/contract in a manner consistent with the normal business practices for sub/contractors in its line of business.*

Example:
After pilot testing a specific treatment process for a treatment plant, the Texas Commission on Environmental Quality (TCEQ) has required a specific piece of equipment that only a single manufacturer produces, or a sole-source. In this instance, two key items are needed for DBE program compliance: a letter from the recipient of financial assistance detailing the circumstances related to the sole-source, and the exemption letter from the TCEQ identifying the specific equipment. These items should be sent to the TWDB and saved within the recipient of financial assistance's project file. Communication should be given to the TWDB's DBE Coordinator upon receipt and review of the TCEQ's exemption letter.

There may be instances when a recipient of financial assistance would like to contract for services or contract with a supplier(s) for an extended period of time. These **multi-year contracts** are allowed and acceptable under the EPA's DBE program, so long as certain steps are followed. When the TWDB's DBE Coordinator reviews any submitted DBE documentation, they will ensure the solicitation language contains the expected scope of work and the applicable timeframes of the contract. The solicitation should also reference the TWDB's negotiated fair share objectives through use of the TWDB's solicitation statement within the advertisement. Including the solicitation statement ensures the multi-year contract is procured under the TWDB's current negotiated fair share objectives. If any of this information is missing, the TWDB's DBE Coordinator may not be able to approve the submitted DBE documentation and may require additional steps in order to meet compliance.

The recipient of financial assistance **must** follow the EPA's DBE process in procuring the multi-year contract(s). A multi-year contract will not be accepted if the contract solicitation and award date occurred more than three years from the date of submission to the TWDB's DBE Coordinator. Multi-year contracts exceeding this timeframe may be evaluated by the TWDB on a case-by-case basis. Advanced notice of this type of procurement should be given to the TWDB's DBE Coordinator before making the decision to execute a procurement/contract.

Example:
The Town of Medgar (Town), is preparing to execute a contract with a consultant engineering firm for engineering services covering all line replacement work within its public water supply system. The Town has drafted a solicitation for water line replacement work for all projects that are or may possibly be funded through the TWDB's Drinking Water State Revolving Fund (DWSRF) and has received an approval for use by the TWDB's DBE Coordinator. The multi-year contract is structured to be in effect for no longer than three years. Following the standard DBE process, the Town posts the solicitation, awards the contract, and then submits the applicable forms to the TWDB for review. Three years later, the Town chooses to take on additional water line replacement work funded through new DWSRF financing. To show compliance, they submit the DBE forms showing their original procurement of the engineering firm to the TWDB's DBE Coordinator. Following this process allows the Town to utilize one consultant engineering firm for all water line replacement projects within the system that are planned and/or implemented within the three years after executing the contract.

In instances where a recipient of financial assistance wants their own staff to perform services, their approval process would follow a **force account** process. Under a force account, the recipient of financial assistance submits a written request to the TWDB's DBE Coordinator describing the scope of work covered by their staff and indicating their participation through the force account process. This letter should remain within their project files. The TWDB's DBE Coordinator will acknowledge its receipt, review for applicability, and respond with a determination before any work proceeds.

PROCUREMENT STEPS

Included in these instructions are steps to successfully perform your DBE solicitation. Please read them carefully. These steps should be taken when procuring construction, equipment, services, and/or supplies. The terms "recipients of financial assistance", "applicant", or "entity" may be used interchangeably. The term "Prime(s)" refers to both "Consultants" and "Contractors".

STEP 1. DETERMINE YOUR PROCUREMENT NEEDS

For all of the categories listed below, you are required to solicit by any of the listed methods identified in Step 2 DBE businesses qualified and capable of completing the work requested. You should also determine whether it is economically feasible to divide the proposed project into smaller tasks or quantities to permit maximum participation by DBE businesses.

Procurement Categories

Construction contracts generally relate to the bidding process for a prime contractor.

Equipment contracts relate to the purchase of equipment from vendors.

Services contracts relate to the hiring of consultants or any other service related work.

Supply contracts relate to the purchase of supplies directly from vendors.

Examples

1. If your project consists of one general construction contract, you will need to solicit DBE prime contractors within the regional vicinity of the project that are capable of completing the work.
2. If your own workforce will be performing all of the work, but you will need to purchase supplies or equipment, then you will need to solicit DBE vendors within the regional project area capable of providing supplies or equipment to your proposed project.

STEP 2. DETERMINE YOUR METHODS OF SOLICITATION

You may choose from a list of seven methods of solicitation. At least TWO methods **must** be chosen. These may be performed in conjunction with any required local or state procurement laws:

- Newspaper Advertisements
- Direct Contact by Phone, Fax, USPS Mail, Email (any combination of these still counts as ONE method)
- Meetings or Conferences
- Minority Media Postings
- Internet Website Postings
- Trade Association Publications (i.e., publishing a solicitation within a Trade Association's publications)
- Other Government Publications (i.e., publishing a solicitation within other governmental publications)

If you choose to solicit via direct contact, additional steps are required to ensure fairness (see Step 2B. Directly Solicit Businesses). To reiterate, depending on your entity or businesses' makeup, you **must** ensure that you meet all applicable local and state procurement laws.

STEP 2A. ADVERTISE YOUR PROJECT

Draft the content of your solicitation. Example advertisement and request for qualifications language is available in appendix B.

To be compliant with the DBE program, all solicitations, both publicly advertised and via direct contact, should address 1) fair share goals; 2) good faith efforts; 3) the involvement of federal EPA funding; and 4) encouragement of MBEs, WBEs, and other DBEs to bid on prime and subcontracts.

To ensure compliance, the TWDB recommends including the following solicitation statement in all solicitations:

> *This contract is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) businesses. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details of the DBE Program and the current, applicable fair share goals, please visit www.twdb.texas.gov/dbe.*

The TWDB encourages you to publish your solicitation at least 30 days prior to the bid closing date to allow sufficient time for potential prime or subconsultants/contractors to submit bids and proposals. The solicitation statement may be used within a newspaper advertisement, a posting to minority media or internet website, or posting within any other trade association or government publications. A copy of the actual solicitation found within/on the publication or web page **must** be kept with the project files and submitted along with the form TWDB-0216.

When advertising your project through a newspaper, it is important to retrieve a publisher's affidavit showing the dates of the posting(s) and the content of the advertisement. This support information **must** be saved with the project files and submitted along with the form TWDB-0216. For entities and projects required by state procurement law to perform an open competitive bidding process (i.e., political subdivisions of the state or districts soliciting for contract(s) more than a specific dollar amount as directed by state procurement law), a posting at least once a week, for two consecutive weeks, in a newspaper published in the municipality (or county) in which the district is located is required (TEX. LOC. GOV'T CODE § 252.041 and TEX. WATER CODE § 49.273).

Note: Sufficient documentation for meetings or conferences held as a method of solicitation include announcements of the meeting or meeting minutes AND a sign-in sheet. Posting items to a government-run plan room is considered the "Other Government Publications" method listed within the previous step. Posting items to a privately-run plan room is considered the "Trade Association Publications" method listed within the previous step. Conducting and submitting a search of businesses does not count as any one of the methods listed within the previous step. Search results are only accepted when accompanied with a detailed, signed explanation to document your inability to locate DBE businesses meeting the qualifications solicited and/or their inability to bid on your project.

STEP 2B. DIRECTLY SOLICIT BUSINESSES

You may directly solicit businesses utilizing phone, fax, USPS mail, or email communications. All documentation of such activity **must** be saved with the project files. When communicating via phone, an electronic or hand-written call log may be used as support. Remember to document the name of the firm solicited, the person contacted, a telephone number, their MBE/WBE status, and the category of work requested.

You **must** make contact with at least three qualified businesses for the specific procurement and **at least one** of those businesses **must** be a certified MBE/WBE business. An example of submitted direct solicitation documentation is available in Appendix D. To determine a business' certification, review Step 3. Determining a Business' DBE Status.

STEP 3. DETERMINING A BUSINESS' DBE STATUS

A DBE is a business owned by a socially and economically disadvantaged individual and certified as such by the EPA or another organization whose certification standards meet or exceed that of the EPA's (See Appendix A for a full definition of DBE). To assist you in identifying, soliciting, and utilizing qualified DBE businesses, the TWDB encourages you to refer to the following list of acceptable DBE certification agencies made available at the local, statewide, and national levels.

- Texas Procurement and Support Services (TPASS) The **Centralized Master Bidders List (CMBL) – Historically Underutilized Business (HUB) Directory Search** is a statewide database managed by the TPASS. This database contains contact information on all vendors registered to do business with the State, including TPASS-certified HUB vendors. The CMBL & HUB search is an online system available to the public free of charge.
- Small Business Administration
- Texas Department of Transportation
- City of Austin Located on the right-hand side of the webpage are links to the MBE/WBE/DBE Certified Vendor Search and SBE Certified Vendors directories.
- City of Houston

A list of other Minority & Women-owned Business Organizations that you may contact directly to obtain a list of qualified vendors for your procurement opportunities may be found at *www.twdb.texas.gov/dbe*.

Please note that MBE, WBE, or Historically Underutilized Business (HUB) certifications provided by the Texas Small Businesses Association or the Texas Certification Directory **will not** be accepted by the TWDB or the U.S. Environmental Protection Agency (EPA) as they do not meet EPA certification requirements.

STEP 4. UNDERSTANDING ROLES AND RESPONSIBILITIES

For Applicants:

As the recipient of financial assistance, you are responsible for ensuring that your project meets EPA's fair share policy for all procurements funded utilizing State Revolving Fund program funds. This includes the subcontracts of your Prime Consultant(s) and Contractor(s). You should review the Prime Consultant's and Contractor's DBE documentation and determine them to be in compliance before you submit the TWDB forms and support for official review.

You may request DBE documentation from your Prime Consultant(s) and Contractor(s) at the time of bid or after you have awarded a contract. Keep in mind your project schedule and the timeframes in which you need to obtain TWDB's approvals to continue progressing with your project. Receiving and reviewing forms earlier ensures that you receive approval well in advance of critical deadlines.

If your Prime Consultant's and Contractor's documented DBE process comes back with any errors, it is your responsibility to work with them to achieve compliance. Be mindful that contracts procured without following requirements may result in the need for re-procurement or be funded utilizing an alternate source of funds other than State Revolving Fund program funds. The TWDB's DBE Coordinator is available to assist you in correcting any deficiencies of your Prime Consultant's and Contractor's procurements. For more detailed instructions, review the section, Applicant's Review of Prime Consultant's/Contractor's Procurements.

If the contract amount for any of your Prime Consultant(s)/Contractor(s) changes from the time of your initial DBE submission, you **must** submit an updated TWDB-0373 listing the final, actual contract dollar amounts.

Note: In the event you change your Prime Consultant/Contractor or any subcontractors, for any reason, you or your Prime Consultant/Contractor must follow the DBE process when re-procuring. This will require you to re-submit a new TWDB-0373 reflecting actual contract dollar amounts and any supporting certification documentation.

For the Prime:

As the Prime, you are responsible for ensuring that your project meets EPA's fair share policy for all procurements funded utilizing State Revolving Fund program funds. You should review the subcontractors' DBE documentation and determine them to be in compliance before you submit the TWDB forms and support to the Entity awarding you a contract.

You may request DBE documentation from your subcontractor(s) at the time of bid or after you have been awarded a contract. Keep in mind your project schedule and the timeframes in which you need to obtain TWDB's approvals to continue progressing with your project. Receiving and reviewing forms earlier ensures that you receive approval well in advance of critical deadlines.

Be mindful that should any DBE forms or support documentation come back with any errors, it is your responsibility to correct any deficiencies to achieve compliance. A contract procured without following all of the necessary requirements may result in the need for re-procurement or be funded utilizing an alternate source of funds other than State Revolving Fund program funds. The TWDB's DBE Coordinator is available to assist you in correcting any deficiencies.

If the contract amount for any of your subcontractors change from the time of your initial DBE submission, you **must** submit an updated TWDB-0373 listing the final, actual contract dollar amounts.

Note: In the event you change any of your subcontractors, for any reason, you must follow the DBE process when re-procuring. This will require you to re-submit a new TWDB-0373 reflecting actual contract dollar amounts and any supporting certification documentation.

STEP 5. CREATING A BIDDERS LIST (APPLICANTS-ONLY)

As a recipient of financial assistance, you **must** create and maintain a Bidders List **if** your solicitation is subject to competitive bidding requirements. The list must include all firms that bid or quote on contracts and/or subcontracts. You **must** keep the bidders list until the project is complete, the project period has expired, and you are no longer receiving EPA funding under the financing agreement.

The following information **must** be retained on the Bidders List:

- The firm's name with point of contact
- The firm's mailing address, telephone number and email address
- The procurement on which the firm bid or quoted, and when
- The firm's status as an MBE/WBE.

The TWDB's form, Affirmative Steps Solicitation Report (TWDB-0216), may be used as the official Bidders List.

You may be exempt from the Bidders List requirement if you have received no more than $250,000 for any single EPA financial assistance agreement OR no more than a combined total of $250,000 for multiple EPA financial assistance agreements within any one federal fiscal year.

STEP 6. COMPLETING THE NECESSARY DBE FORMS

If you are completing these steps **prior to closing** on a TWDB financial assistance award:

Applicant: The forms you must complete and sign are the TWDB-0216 and TWDB-0373. These forms document the methods of solicitation used, who was directly solicited and/or made a bid, and who was ultimately awarded a contract. You may have chosen one or more Prime Consultants (typically an Engineer, Financial Advisor, and/or Bond Counsel).

Prime(s): You must complete and sign the TWDB-0217 acknowledging you understand the DBE program requirements.

All three of these forms are needed well in advance of your (applicant's) anticipated closing date, as they must be reviewed and approved by TWDB staff before the closing is initiated. Confirm all forms are accurately completed, the required support documentation has been attached, and dated signatures from the appropriate authorized representatives are included.

If you are completing these steps for the **release funds for the planning, acquisition, and/or design phases**:

Prime(s): In addition to having the above referenced forms completed, you will need to complete and submit additional forms if you have selected subcontractors. Forms TWDB-0216 and TWDB-0373 should be completed and submitted to the Entity awarding you a contract. These forms document the methods of solicitation used, who was directly solicited and/or made a bid, and who was ultimately awarded a contract. All of these forms are needed in advance of the desired date for release of funds, as they **must** be reviewed and approved by TWDB staff before the release is initiated. Confirm that all forms are accurately completed, the required support documentation has been attached, and dated signatures from the appropriate authorized representatives are included.

If you are completing these steps for a **construction contract(s)**:

Applicant: Forms TWDB-0216 and TWDB-0373 are required showing your selection process for a Prime Contractor(s).

Prime(s): Form TWDB-0217 **must** be completed acknowledging that you understand the DBE program requirements. If subcontractors are utilized, complete forms TWDB-0216 and TWDB-0373 showing your selection process.

These forms are needed in advance of the desired date for release of funds, as they **must** be reviewed and approved by TWDB staff before the release is initiated. Confirm that all forms are accurately completed, the required support documentation has been attached, and dated signatures from the appropriate authorized representatives are included.

Note: In the event you change any of your subcontractors, for any reason, you must follow the DBE process when re-procuring. This will require you to re-submit a new TWDB-0373 reflecting actual contract dollar amounts and any supporting certification documentation.

In the event you run out of space on any of the TWDB forms, you can use your own additional spreadsheet or word document and attach.

STEP 7. SUMMARIZING THE PROCESS

The following is a summary of the necessary steps to complete in order to receive a notice of compliance with the DBE program requirements.

- Applicant: Publish, post, contact, and/or distribute advertisements soliciting for a Prime Consultant(s)/Contractor(s) for the proposed project. It is recommended that this occur at least 30-days prior to the close of accepting bids. The solicitation advertisement should contain the TWDB's recommended solicitation statement.
- Applicant: If applicable, create and retain a copy of a Bidders List (refer to Step 5).
- Primes: Complete and submit the Prime Consultant/Contractor Certification form (TWDB-0217) to the Entity awarding you a contract. If instructed to do so by the Entity, also submit the completed form to the TWDB Review Engineer. If sent electronically, copy DBE@twdb.texas.gov.
- Primes: If subcontracting, publish, post, contact, and/or distribute advertisements soliciting subcontractor(s) for the proposed project. It is recommended that this occur at least 30-days prior to the close of accepting bids. The solicitation advertisement should contain the TWDB's recommended solicitation statement.
- All: Save all copies, correspondence, etc. documenting the solicitation(s).
- All: Based upon the stage of the project, complete all necessary forms associated with the solicitation and award of the contract(s) for Prime Consultant(s)/Contractor(s) or subcontractor(s) (refer to Step 6 for the required forms).
- All: Compile all necessary forms from your selected Prime Consultant(s)/Contractor(s) or subcontractor, based upon the stage of the project. Ensure accuracy and completeness of the forms. Coordinate with the submitter should there be any errors.
- All: Submit all required documentation to the TWDB Project Reviewer / Engineer assigned to the project. If submitting electronically, copy DBE@twdb.texas.gov with the submission.

STEP 8. CHANGES TO SELECTED CONSULTANTS OR CONTRACTORS

In the event there is a change of Consultant(s)/Contractor(s) or any subcontractor(s), you **must** follow the DBE process when re-procuring.

APPLICANT'S REVIEW OF PRIME CONSULTANT'S/CONTRACTOR'S PROCUREMENTS

Before submitting any DBE documentation to the TWDB for an official review, look over the DBE documentation from your Prime Consultants/Contractors to confirm the documents are in order and the procurements are in compliance.

As a recipient of financial assistance, it is important to remember you are responsible for the Prime Consultant's/Contractor's soliciting of DBE businesses (DBE includes both MBEs and WBEs) for any procurements needed to complete your proposed project. This includes all construction, services, supplies and/or equipment.

If you encounter any errors, most can be corrected for compliance after the bid opening date as long as no awards have been made.

If you are unsure of any information presented to you during the review of the Prime Consultant(s)/Contractor(s) efforts, please contact the TWDB's DBE Coordinator for further instruction or recommendation at (512) 463-0991 or at DBE@twdb.texas.gov.

Included in these instructions are steps to successfully perform your review of your Prime Consultant(s)/Contractor(s) DBE documentation for this project. Please read them carefully. The term Prime(s) refers to both Consultants and Contractors. The terms recipient of financial assistance, applicant, or entity may be used interchangeably.

STEP 1. REVIEW ANY DRAFT SOLICITATIONS

Prior to the Prime Consultant(s)/Contractor(s) making any solicitations for subcontractor opportunities, you should review the draft solicitation to ensure that the TWDB's recommended solicitation statement, or the statement with the required solicitation components (see p. 8) is included. For reference, the following should appear in all solicitations:

> *This contract is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) businesses. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details of the DBE Program and the current, applicable fair share goals, please visit www.twdb.texas.gov/dbe.*

If this or another form of acceptable language is not included, procurements made through the solicitation may not be compliant with the EPA's DBE Program.

STEP 2. ENSURE THAT ALL DOCUMENTATION HAS BEEN PROVIDED BY THE PRIME(S)

The Prime Consultant(s)/Contractor(s) should provide you, the Applicant:

- TWDB-06217 This form acknowledges that the Prime Consultant/Contractor understands that they **must** follow the DBE program when soliciting for subcontractors.
- TWDB-0216 If subcontractors are utilized, this form should be submitted. The form indicates all businesses solicited for procurement, their contact information, and their MBE/WBE status. The Prime Consultant/Contractor **must** include support documentation demonstrating they have met the Six Good Faith Efforts and followed the correct steps for their selected method(s) of solicitation.
- TWDB-0373 If subcontractors are utilized, this form should be submitted. The form identifies the businesses awarded a procurement contract, their contact information, their MBE/WBE status, an actual or anticipated executed contract date, and contract amount. If any MBE/WBE businesses are contracted, the Prime Consultant/Contract should include the DBE certification along with the form as support documentation. You **must** review the certification to ensure that the certification comes from an agency acceptable to the EPA. A list of acceptable DBE certification agencies may be found at www.twdb.texas.gov/dbe. *Note: Any businesses operating as brokers may not be listed on the TWDB-0373 as an MBE or WBE.* [3]

STEP 3. REVIEW THE SUPPORTING SOLICITATION DOCUMENTATION

The DBE solicitation should specifically describe the construction work, supplies, equipment, or services that are being solicited, and include the following required DBE language:

> *This contract is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) businesses. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details of the DBE Program and the current, applicable fair share goals, please visit www.twdb.texas.gov/dbe.*

Similar to the solicitation you performed for your Prime Consultant(s)/Contractor(s), the TWDB recommends solicitations for subcontractors be published at least 30 days prior to the bid closing date to allow sufficient time for potential subcontractors to submit bids and proposals. You should ensure that a copy of the actual solicitation found within/on the publication or web page is kept with their and your project files. This information will be needed for submission to the TWDB for official review of DBE compliance.

If the Prime Consultant(s)/Contractor(s) is advertising through a newspaper, it is important to ensure that they have retained a publisher's affidavit showing the dates of the posting(s) and the content of the advertisement. You should also ensure that this support information is saved with their and your project files, as the information will be needed for submission to the TWDB for official review. Be mindful of your applicable local and state procurement laws as they relate to your Prime Consultant's/Contractor's solicitation of subcontractors.

[3] *A broker is a business that does not perform, manage, or supervise the work of its sub/contract in a manner consistent with the normal business practices for sub/contractors in its line of business.*

STEP 3A. REVIEW PHONE LOGS, FAX TRANSMITTAL LOGS, EMAIL DELIVERY RECIEPTS, MEETING SIGN-IN SHEET, MINORITY MEDIA POSTING, INTERNET & WEB POSTINGS, TRADE ASSOCIATION PUBLICATIONS AND OTHER GOVERNMENT PUBLICATIONS

If the Prime Consultant(s)/Contractor(s) chose one of the solicitation methods mentioned above, they are **required** to provide support documentation showing that the TWDB's required solicitation statement was included or mentioned. Review all support documentation to ensure that this requirement was met.

STEP 4. CLOSE COORDINATION

It is important for you and your Prime Consultant(s)/Contractor(s) to coordinate closely during all phases of your project to ensure that all DBE requirements have been met. Failure to do so may result in project delays or the inability to make use of State Revolving Fund program funds.

STEP 5. NOW THAT YOU HAVE COMPLETED YOUR REVIEW

Once you have completed your review of the Prime Consultant's/Contractor's solicitation efforts and have determined that they are in compliance, you should keep all documentation on file in the event it is requested for review by the TWDB or the U.S. Environmental Protection Agency. All of the Prime Consultant's/Contractor's DBE solicitation documentation should be included in the DBE compliance package submitted to TWDB.

CONTRACT ADMINISTRATION REQUIREMENTS

Each procurement contract signed by a recipient of financial assistance must include the following term and conditions:

> The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

Additionally, the following U.S. EPA DBE regulations apply:

- A recipient **must** require its Prime Contractor to pay its subcontractor for satisfactory performance no more than 30 days from the Prime Contractor's receipt of payment from the recipient.
- A recipient **must** be notified in writing by its Prime Contractor prior to any termination of a DBE subcontractor for convenience by the Prime Contractor.
- If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the Prime Contractor to employ the Six Good Faith Efforts described in 40 CFR § 33.301 if soliciting a replacement subcontractor.
- A recipient **must** require its Prime Contractor to employ the Six Good Faith Efforts even if the Prime Contractor has achieved its fair share objectives.

DBE PROGRAM LINKS

TWDB DBE Program Webpage: www.twdb.texas.gov/dbe

DBE Rules (40 CFR Parts 33, 35, and 40): www.epa.gov/sites/production/files/2013-09/documents/final_dbe_rule.pdf

MBE/WBE Certification Fact Sheet: www.epa.gov/sites/production/files/2013-09/documents/mbe_wbe_certification.pdf

APPENDIX A. GLOSSARY

- **Applicant** – a public or private utility seeking funding from the Clean Water State Revolving Fund (i.e., Equivalency funding only) or the Drinking Water State Revolving Fund.
- **Broker** – a business that does not perform, manage, or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.
- **Construction** – the erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.
- **Disadvantaged Business Enterprises (DBE)** – an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. §4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. §7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program. This term includes Minority Business Enterprises (MBE) and Women-owned Business Enterprises (WBE).
- **Entity** – See "Applicant".
- **Equipment** – items procured under a financial assistance agreement as defined by applicable regulations for the particular type of financial assistance received.
- **Equivalency funding** – a term used to categorize projects within the Clean Water State Revolving Fund program identified by the TWDB whose cumulative funding is in an amount equal to the capitalization grant awarded by EPA to the TWDB.
- **Fair Share Goals / Objectives** – are goals based upon the capacity and availability of qualified, certified MBEs and WBEs within the state for the procurement categories of construction, equipment, services, and supplies, compared to the number of all qualified entities within the state for the same procurement categories. The goals are negotiated every three years between the TWDB and EPA. A fair share objective is not a quota; a recipient cannot be penalized for not meeting its fair share objectives; and, once negotiated, fair share objectives remain in place for three years.
- **Fair Share Policy** – a policy maintained by the EPA relating to the "Good Faith Effort" to award a fair share of the work to contractors who are certified as Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) whenever procuring construction, supplies, services and equipment. The TWDB's current negotiated fair share goals are available on page 2. Recipients are not required to meet the fair share goals; however, the EPA may take remedial action under 40 CFR §33.105 for failure to comply with DBE program requirements.
- **Financial Assistance Agreement** – a binding legal agreement between the recipients of financial assistance and the TWDB outlining the terms and conditions for the funding provided and the recipient's obligations.

- **Force Account** – the part of the expense account of a public body (as a municipality) resulting from the employment of a labor force usually distinguished from the part resulting from contracting similar services with commercial agencies
- **Historically Underutilized Business (HUB)** – a small business organization that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
- **Minority Business Enterprises (MBE)** – a Disadvantaged Business Enterprise (DBE) owned and/or controlled by a socially and economically disadvantaged individual other than a Small Business Enterprise (SBE), Labor Surplus Area Firm (LSAF), Small Business in Rural Areas (SBRA), or Women-owned Business Enterprise (WBE).
- **Prime Consultant** – consultants awarded a contract by the recipient of financial assistance, typically during the initial phases of a project; primarily the project's consulting Engineer, Financial Advisor, and Bond/Legal Counsel.
- **Prime Contractor** – contractors awarded a contract by the recipient of financial assistance, typically during the construction phase of a project.
- **Procurement** – the act of obtaining construction work, equipment, services, or supplies.
- **Recipient** – See "Applicant".
- **Services** – a contractor's labor, time or efforts provided in a manner consistent with normal business practices which do not involve the delivery of a specific end item, other than documents (e.g., reports, design drawings, specifications).
- **Six Affirmative Steps** – also referred to as the Six Good Faith Efforts, are the steps every recipient of financial assistance through the State Revolving Fund must follow, along with their Prime Consultant(s)/Contractor(s), in order to adequately offer the opportunity to make bids for work paid using these funds.
- **Six Good Faith Efforts** – See "Six Affirmative Steps".
- **Small Business Enterprises (SBE)** – an organization, including its affiliates, independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR Part 121.
- **Subcontractor** – a business awarded a contract by a Prime Consultant/Contractor for specific work, services, supplies, or equipment.
- **Supplies** – items procured under a financial assistance agreement as defined by applicable regulations for the particular type of financial assistance received.
- **Women-owned Business Enterprises (WBE)** – a business which is at least 51% owned or controlled by women for purposes of EPA's 8% statute or a business concern which is at least 51% owned and controlled by women for purposes of EPA's 10% statute. Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband's 50% interest in her share. Similarly, a business which is more than 50% owned by a married man will not become a qualified WBE by virtue of his wife's 50% interest in his share.

APPENDIX B. EXAMPLE ADVERTISEMENTS (REQUEST FOR QUALIFICATIONS)

ADVERTISEMENT / INVITATION FOR BIDS REQUEST FOR SEALED PROPOSALS

The City of ___ will receive bids for the Lift Station and Sanitary Sewer Rehabilitation Project at ____ City Hall until 3:00 p.m., on the _____ day of_____, 2011, at the City _____ City Hall located on 123 Example St., _____, Texas 78516, at which time all bids will be received and publicly opened and read. Bids received after the closing time will be returned unopened. NO PRE-BID CONFERENCE WILL BE CONDUCTED.

This contract is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) businesses. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details on the DBE Program and the current, applicable fair share goals, please visit www.twdb.texas.gov/dbe.

This contract is to be funded through a loan obtained from the Texas Water Development Board as part of the Clean Water State Revolving Fund. There are a number of special provisions for this funding that bidders, by submitting a bid, acknowledge understanding, including the following: A contract is contingent upon release of funds from the TWDB. Any contract or contracts awarded under this Notice to Bidders are expected to be funded in part by financial assistance from the TWDB. Neither the State of Texas nor any of its departments, agencies, or employees are or will be a party to this Invitation for Bids or any resulting contract.

Equal Opportunity in Employment - All qualified applicants will receive consideration for employment without regard to race, color, national origin, sex, religion, age, or handicap. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under TWDB financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach, which may result in the termination of the awarded financial assistance.

The project will consist of the following:
The City of ____ intends to replace/install/upgrade electrical controls and minor rehab for eight (8) lift stations remove and replace approx. 616 linear feet of 8” sanitary sewer line, remove and replace approx. 1,758 linear feet of 12” clay sanitary sewer line with a 15” PVC sanitary sewer line, remove and replace ten (10) 48” brick manholes with 48” fiberglass manholes.

Contract Documents, including Drawings and Technical Specifications are on file at the City of _____ City Hall or at the office of _____, at ____, ____. Please direct questions to _____.

Copies of the Contract Documents and Construction Plans can be examined at _____. Bidders, suppliers or sub-contractors may obtain copies of the Contract Documents for bidding purposes at ____ for a non-refundable payment of $100.00 per set, checks made payable to _____. A Certified check or bank draft, payable to the order of City of _____ or negotiable U.S. Government Bonds (at par value) or a satisfactory Bid Bond executed by the Bidder of an acceptable surety in an amount equal to five percent (5%) of the total bid shall be submitted with each bid.

The City of _____ reserves the right to reject any or all bids or to waive any informality in the bidding. Bids may be held by the City of _____ for a period not to exceed sixty (60) days from the date of the bid opening for the purpose of reviewing the bids and investigating the bidders' qualifications prior to the contract award.
Small and minority firms are encouraged to submit bids for this project.

ENGINEER, BOND COUNSEL, and FINANCIAL ADVISOR - REQUEST FOR QUALIFICATIONS

The City of _____ requests the submission of qualifications statements, which will lead to the possible award of a contract to provide _____ services for a project involving the City's Water Treatment Facilities.

Scope of Work

The services to be obtained for the **Engineer** require:_____

The services to be obtained for the **Bond Counsel** require:_____

The services to be obtained for the **Financial Advisor** require:_____

Guidelines for Content of Qualification Statements

DO NOT INCLUDE COST INFORMATION with the qualification statement. Responses that include cost or pricing information will be rejected and will not be considered by the City.

Detailed instructions on preparation of the qualification statement must be obtained from the City. For more information on preparing and submitting the qualification statement, contact _____, City Administrator, at_____. This information should be requested as soon as possible in order to allow time to prepare the document and comply with the procedures.

Submittal Deadline

Three copies of the qualifications statement must be filed with the City by: _____.

Minimum Qualifications and Selection Criteria

The City will evaluate the proposals to determine which firm has the best qualifications.

Contract Terms and Negotiation Schedule

The consultant for *Bond Counsel*, *Financial Advisor*, *Engineering* and *Rate Consultant* services is expected to negotiate an agreement for services that is acceptable to the City. If an acceptable contract cannot be negotiated, the City may formally end negotiations and begin negotiating with the next highest qualified person or firm.

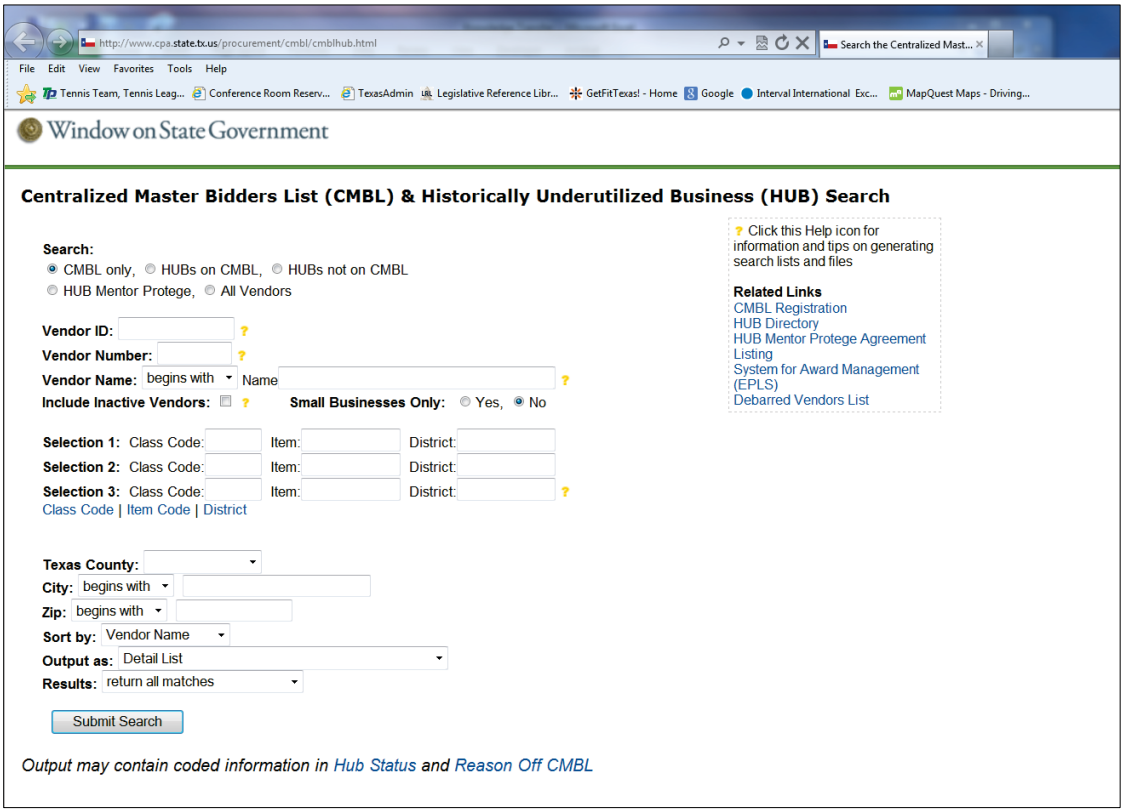
This contract is contingent upon release of funds from the Texas Water Development Board (TWDB). Any contract or contracts awarded under this Invitation for Bid (IFB) or Request for Qualifications (RFQ) are expected to be funded in part by a loan from the TWDB. Neither the State of Texas nor any of its departments, agencies, or employees are or will be a party to this IFB, RFQ, or any resulting contract. RFQ's are issued in accordance with Section 2254 of the Texas Government Code (Professional Services Act).

This contract is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) firms. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details of the DBE Program and the current, applicable fair share goals, please visit www.twdb.texas.gov/dbe.

The City of _____ is an affirmative action/equal opportunity employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap or national origin. Small, minority, and women-owned business enterprises are encouraged to submit proposals.

APPENDIX C. HOW TO SEARCH THE CMBL AND HUB DIRECTORY

Visit the Texas Procurement and Support Services (TPASS) website at https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp.



NIGP Class-Item Codes contain 5-digits. To obtain the five-digit code, combine the three-digit class code with its corresponding two-digit item number.

Step 1: Go to the TPASS website.

Step 2: Select the type of business search: CMBL only, HUBs on CMBL, HUBs not on CMBL, HUB mentor protégé, or all vendors.

Step 3: Enter the respective commodity class, item and district codes (please see next page for related water and wastewater commodities) and click on Search.

Step 4: On the following page, select the information you would like to obtain from the database: contact information, address, business description, gender, ethnicity, and website.

Step 5: Search Results will appear with the requested information.

Step 6: Click on the Vendor ID or business name to pull up detailed vendor information to confirm HUB status (A = Active, N = Not HUB), contact information, and registered commodities.

Step 7: Gather physical or email contact information from the search results list.

Example National Institute of Government Purchasing (NIGP) Commodity Codes

Class	Item(s)	Description
890 (Water Supply, Groundwater, Sewage Treatment, and Related Equipment)	01 - 95	Equipment (various)
907 (Architectural and Engineering Services – Non-Professional)	42	Geotechnical – Soils
907 (Architectural and Engineering Services – Non-Professional)	75	Site Assessment and Site Field Observation
907 (Architectural and Engineering Services – Non-Professional)	83	Testing Services
912 (Construction Services, General)	16	Boring, Drilling, Testing, Soundings
912 (Construction Services, General)	23	Construction, General (Backfill Services, Digging, Ditching, Road Grading, Rock Stabilization)
912 (Construction Services, General)	40	Demolition Services
912 (Construction Services, General)	44	Excavation Services
912 (Construction Services, General)	75	Quality Control Testing Services
913 (Construction Services, Heavy – Including Maintenance and Repairs)	39	Construction, Pipe Culvert
913 (Construction Services, Heavy – Including Maintenance and Repairs)	40	Construction, Pipeline
913 (Construction Services, Heavy – Including Maintenance and Repairs)	45	Construction, Sewer and Storm Drain
913 (Construction Services, Heavy – Including Maintenance and Repairs)	47	Construction, Sidewalk and Driveway
913 (Construction Services, Heavy – Including Maintenance and Repairs)	56	Construction, Utility/Underground Projects
913 (Construction Services, Heavy – Including Maintenance and Repairs)	59	Construction and Upgrades, Wastewater Treatment Plant
913 (Construction Services, Heavy – Including Maintenance and Repairs)	60	Construction, Water System/Plants, Main and Service Line
913 (Construction Services, Heavy – Including Maintenance and Repairs)	63	Lime Slurry Removal Services
913 (Construction Services, Heavy – Including Maintenance and Repairs)	77	Maintenance and Repair, Pipe Culvert
913 (Construction Services, Heavy – Including Maintenance and Repairs)	78	Maintenance and Repair, Pipeline (Includes Removal and Relocation)
913 (Construction Services, Heavy – Including Maintenance and Repairs)	81	Maintenance and Repair, Sewer and Storm Drain (Including Removal)
913 (Construction Services, Heavy – Including Maintenance and Repairs)	82	Maintenance and Repair, Sidewalk and Driveway (Including Removal)
913 (Construction Services, Heavy – Including Maintenance and Repairs)	89	Maintenance and Repair, Utility/Underground Projects
913 (Construction Services, Heavy – Including Maintenance and Repairs)	91	Maintenance and Repair, Wastewater Treatment Plant
913 (Construction Services, Heavy – Including Maintenance and Repairs)	92	Maintenance and Repair, Water System, Main and Service Line
914 (Construction Services, Trade (New Construction))	27 -88	Construction Trades (various)
918 (Consulting Services)	16	Archeological Consulting
918 (Consulting Services)	41	Energy Conservation Consulting

Class	Item(s)	Description
918 (Consulting Services)	42	Engineering Consulting
918 (Consulting Services)	43	Environmental Consulting
918 (Consulting Services)	46	Feasibility Studies (Consulting)
918 (Consulting Services)	55	Geological Consulting and Study
918 (Consulting Services)	72	Lakes, Rivers, and Other Waterway Management Consulting Services
918 (Consulting Services)	74	Legal Consulting
918 (Consulting Services)	97	Utilities: Gas, Water, Electric Consulting
925 (Engineering Services, Professional)	17	Civil Engineering
925 (Engineering Services, Professional)	24	Desalination (Process and Facilities) Engineering
925 (Engineering Services, Professional)	28	Drainage Engineering
925 (Engineering Services, Professional)	33	Engineer Services, Professional
925 (Engineering Services, Professional)	34	Energy Management Engineering
925 (Engineering Services, Professional)	35	Environmental Engineering
925 (Engineering Services, Professional)	36	Engineering Services (Not Otherwise Classified)
925 (Engineering Services, Professional)	37	Facilities Design Services, Engineering
925 (Engineering Services, Professional)	44	General Construction: Management, Scheduling, Cost Estimation – Engineering
925 (Engineering Services, Professional)	45	Geological Engineering
925 (Engineering Services, Professional)	46	Geotechnical Engineering
925 (Engineering Services, Professional)	58	Irrigation; Drainage: Flood Control/Engineering
925 (Engineering Services, Professional)	61	Land Development and Planning/Engineering
925 (Engineering Services, Professional)	70	Municipal Engineering
925 (Engineering Services, Professional)	77	Pollution Control Engineering
925 (Engineering Services, Professional)	78	Power Generation, Transmission, Distribution - Engineering
925 (Engineering Services, Professional)	83	Sanitary Engineering
925 (Engineering Services, Professional)	87	Sewage Collection, Treatment, and Disposal Engineering
925 (Engineering Services, Professional)	96	Waste Water Treatment Engineering
925 (Engineering Services, Professional)	97	Water Supply, Treatment, and Distribution/Engineering
926 (Environmental and Ecological Services)	14	Air Pollution Control Services (Including Data Collection Research and Development, etc.)
926 (Environmental and Ecological Services)	23	Auditing Services, Environment
926 (Environmental and Ecological Services)	29	Contaminated Groundwater Services (Including Discharge Pipe Installation)
926 (Environmental and Ecological Services)	40	Ecological Services
926 (Environmental and Ecological Services)	41	Ecosystem Development, Management and Protection Services
926 (Environmental and Ecological Services)	42	Environmental Services (Not Otherwise Classified)
926 (Environmental and Ecological Services)	52	Impact Studies, Environmental
926 (Environmental and Ecological Services)	62	Noise Testing Services
926 (Environmental and Ecological Services)	70	Permitting Services, Environmental
926 (Environmental and Ecological Services)	72	Planning and Advisory Services, Environmental
926 (Environmental and Ecological Services)	83	Site Assessment, Environmental
926 (Environmental and Ecological Services)	85	Soil, Soil Vapor, and Groundwater Sampling and Analysis (Including Disposal)
926 (Environmental and Ecological Services)	88	Storm Water Discharge Testing Services
926 (Environmental and Ecological Services)	90	Subsurface Testing, Environmental

Class	Item(s)	Description
926 (Environmental and Ecological Services)	91	Tank Testing and Disposal Services, Storage (Including Underground Types)
926 (Environmental and Ecological Services)	94	Water Pollution Services
926 (Environmental and Ecological Services)	95	Water/Wastewater Conservation Services
926 (Environmental and Ecological Services)	96	Wetland Delineations (Including Assessments)
946 (Financial Services)	25	Banking Services
946 (Financial Services)	30	Cash/Securities and Bonding Services
946 (Financial Services)	38	Custom Brokerage Services (Including Stocks and Bonds)
946 (Financial Services)	48	Financial Advisor
946 (Financial Services)	49	Financial Services (Not Otherwise Classified)
946 (Financial Services)	56	Investment Management Services
946 (Financial Services)	60	Loan Administration
946 (Financial Services)	66	Monetary Systems (Including Analysis, Liquidity, Policy, etc.)
946 (Financial Services)	75	Securities and Commodities Market Services (Including Direct or Indirect Purchases, Sales and Transactions of Equities, Fixed Income, Options, and Derivatives on an Agency and Principal Basis)
946 (Financial Services)	85	Trusts, Estates and Agency Accounts
958 (Management Services)	05	Asset Management Services
958 (Management Services)	12	Bio-Solids Management Services
958 (Management Services)	26	Construction Management Services
958 (Management Services)	39	Financial Management Services
958 (Management Services)	77	Project Management Services
958 (Management Services)	85	Soil and Land Management Services (Including Testing, Protection, Preparation, Planning, etc.)
961 (Miscellaneous Services, No 1. (Not Otherwise Classified))	01	Archeological Services
961 (Miscellaneous Services, No 1. (Not Otherwise Classified))	32	Environmental Impact Studies
961 (Miscellaneous Services, No 1. (Not Otherwise Classified))	49	Legal Services, Attorney
961 (Miscellaneous Services, No 1. (Not Otherwise Classified))	85	Utility Services, Water
961 (Miscellaneous Services, No 1. (Not Otherwise Classified))	91	Water and Petroleum Pipeline Services
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	14	Blue Printing Services: Blue Prints, Blue Line, Large Engineering
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	39	Hauling Services
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	50	Leak Detection Services: Gas, Water, Chemical
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	52	Mapping Services (Including Cartography and Surveying Services (Not Aerial – See 902-33 and 905-10 for Aerial Mapping and Surveying Services)
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	92	Video Scanning of Sewers, Water Wells, etc.
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	94	Water Services, Bottled and Bulk Delivery (Tanker Services)

Class	Item(s)	Description
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	**96**	**Well Services (Including Oil, Gas, and Water): Drilling, Plugging, Consulting, Maintenance and Repair**
968 (Public Works and Related Services)	**18**	**Back Flow Preventer Testing Services**
968 (Public Works and Related Services)	**47**	**Inspection Services, Construction Type**
968 (Public Works and Related Services)	**63**	**Relocation and/or Removal Services for Utility Works**
968 (Public Works and Related Services)	**66**	**Right of Way Services (Including Title, Appraisal, Negotiation, Closing, Relocation, Condemnation, etc.)**
968 (Public Works and Related Services)	**73**	**Storm Drain Cleaning, Repair, and Sludge Removal Services**
968 (Public Works and Related Services)	**78**	**Tank Installation, Removal, Disposal, and Related Services (Including Septic and Underground Type)**
968 (Public Works and Related Services)	**91**	**Water Supply Analysis, Infrastructure Analysis, Water Quality Analysis, and Long-Term Planning**
968 (Public Works and Related Services)	**92**	**Water Supply Plant Operating and Monitoring System Services (Including Water Resources Development and Water Quality Management Services)**
968 (Public Works and Related Services)	**96**	**Water and Wastewater Treatment Services**

APPENDIX D. EXAMPLES OF DIRECT SOLICITATIONS

Example Call/Fax Log

For facsimiles, a copy of one of the faxed information should be provided with the completed TWDB-0216 form submission.

DBE Call Log
City of Yaleville Water Treatment Plant Project
DWSRF

Date: 10/15/16
Contact: Carl Sagan, Manager
Company: Goldberg Instruments LLC
Phone No.: 313.555.7199
Certification: Not a MBE/WBE
Comments: Requested a quote on lab equipment for water quality testing. Emailed the ad used in The Yaleville Hollar classifieds.

Date:
Contact:
Company:
Phone No.:
Certification:
Comments:

Date: 10/15/16
Contact: Neil deGrasse Tyson, Owner
Company: N.E.G. Instruments, LLC
Phone No.: 313.555.1000
Certification: MBE, Certified by City of Austin
Comments: Requested a quote on lab equipment for water quality testing. Emailed the ad from The Yaleville Hollar classifieds.

Date:
Contact:
Company:
Phone No.:
Certification:
Comments:

Date: 10/16/16
Contact: Michio Kaku, President
Company: Bottom Page Instrument Company
Phone No.: 313.559.4322
Certification: MBE, Certified by Texas D.O.T.
Comments: Requested a quote on lab equipment for water quality testing.

Date:
Contact:
Company:
Phone No.:
Certification:
Comments:

Date:
Contact:
Company:
Phone No.:
Certification:
Comments:

Date:
Contact:
Company:
Phone No.:
Certification:
Comments:

Date:
Contact:
Company:
Phone No.:
Certification:
Comments:

Example Email

From: Felix Stanton
Sent: Monday, November 28, 2016 4:32 PM
To: Rose Mendoza (rmendoza@shiplap.com)
Subject: Yaleville WTP RFT

Importance: High

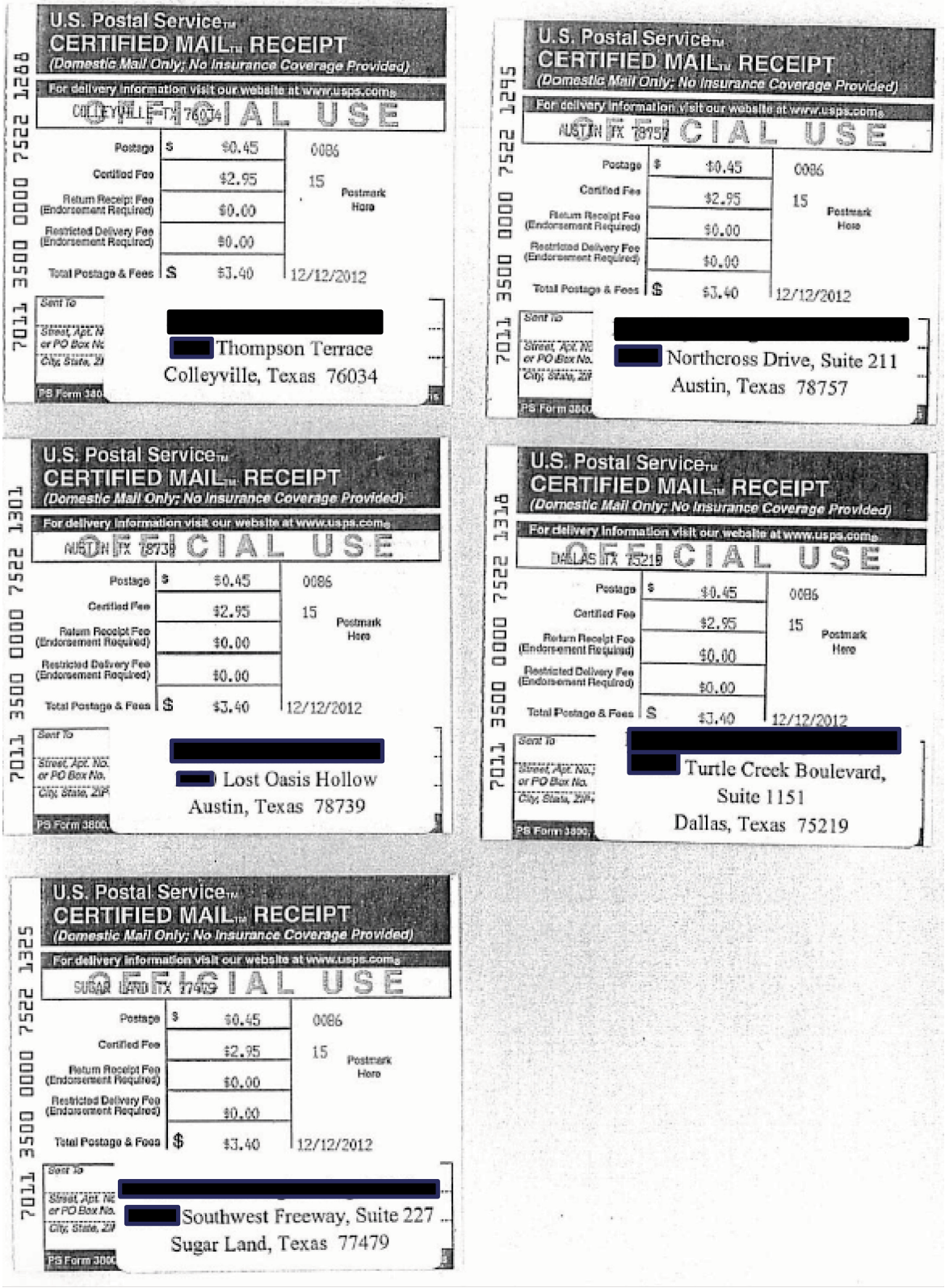
Attachments: Yaleville WTP Project RFT

Ms. Mendoza,

The City of Yaleville is seeking a response to this Request for Tender (RFT) for lab equipment for water quality testing.

Example US Mail

Along with the Certified mail receipts (shown below), a copy of one of the mailed letters should be provided with the completed TWDB-0216 form submission.



U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com®
COLLEYVILLE TX 76034 OFFICIAL USE

Postage	$ $0.45
Certified Fee	$2.95
Return Receipt Fee (Endorsement Required)	$0.00
Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$ $3.40

0086 15 Postmark Here 12/12/2012

7011 3500 0000 7522 1288

Sent To
Street, Apt. N
or PO Box No.
City, State, Zi
[redacted] Thompson Terrace
Colleyville, Texas 76034
PS Form 380

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com®
AUSTIN TX 78757 OFFICIAL USE

Postage	$ $0.45
Certified Fee	$2.95
Return Receipt Fee (Endorsement Required)	$0.00
Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$ $3.40

0086 15 Postmark Here 12/12/2012

7011 3500 0000 7522 1295

Sent To
Street, Apt. No.
or PO Box No.
City, State, ZIP
[redacted] Northcross Drive, Suite 211
Austin, Texas 78757
PS Form 3800

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com®
AUSTIN TX 78739 OFFICIAL USE

Postage	$ $0.45
Certified Fee	$2.95
Return Receipt Fee (Endorsement Required)	$0.00
Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$ $3.40

0086 15 Postmark Here 12/12/2012

7011 3500 0000 7522 1301

Sent To
Street, Apt. No.
or PO Box No.
City, State, ZIP
[redacted] Lost Oasis Hollow
Austin, Texas 78739
PS Form 3800

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com®
DALLAS TX 75219 OFFICIAL USE

Postage	$ $0.45
Certified Fee	$2.95
Return Receipt Fee (Endorsement Required)	$0.00
Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$ $3.40

0086 15 Postmark Here 12/12/2012

7011 3500 0000 7522 1318

Sent To
Street, Apt. No.;
or PO Box No.
City, State, ZIP+
[redacted] Turtle Creek Boulevard,
Suite 1151
Dallas, Texas 75219
PS Form 3800

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com®
SUGAR LAND TX 77479 OFFICIAL USE

Postage	$ $0.45
Certified Fee	$2.95
Return Receipt Fee (Endorsement Required)	$0.00
Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$ $3.40

0086 15 Postmark Here 12/12/2012

7011 3500 0000 7522 1325

Sent To
Street, Apt. No.
or PO Box No.
City, State, ZIP
[redacted] Southwest Freeway, Suite 227
Sugar Land, Texas 77479
PS Form 3800

ATTACHMENT 1 – AFFIRMATIVE STEPS CERTIFICATION AND GOALS (TWDB-0215)

To download this document, view TWDB-0215 from the TWDB website.

FOR OFFICE USE ONLY: Commitment #

TWDB-0215
Revised 08/14/2018

TWDB-0215
APPLICANT/ENTITY
TEXAS WATER DEVELOPMENT BOARD
AFFIRMATIVE STEPS CERTIFICATION and GOALS

I. PROJECT INFORMATION

TWDB Project Number	Applicant/Entity Name	Total of TWDB Funding Request	Program Type (insert "X" for all that apply)	
			☐	Drinking Water SRF (DWSRF)
			☐	Clean Water SRF (CWSRF)

II. GOOD FAITH EFFORT (Applicable to all PRIME contracts awarded by the applicant/entity)

I understand that it is my responsibility to comply with all state and federal regulations and guidance in the utilization of Minority and Women-Owned Businesses in procurement. I certify that I will make a good faith effort to afford opportunities for Minority Business Enterprise (MBE), and Women-Owned Business Enterprise (WBE) by:

1.	Including qualified MBEs and WBEs on procurement solicitation lists
2.	Soliciting potential MBE's and WBE's
3.	Reducing contract size/quantities when economically feasible to permit maximum participation by MBE's and WBE's
4.	Establishing delivery schedules to encourage participation by MBE's and WBE's
5.	Using the services and assistance of the Small Business Administration, Minority Business Development Agency, U.S. Department of Commerce, and Texas Marketplace
6.	Requiring all Prime Consultants/Contractors to follow steps 1-5 listed above in employing MBE and WBE Subcontractors

Signature - Applicant/Entity Representative	Title (print legibly)	Date

III. PROJECT PARTICIPATION ESTIMATES

The Cost Categories mentioned below are goals. These goals are neither standards nor quotas. Recipients of financial assistance are not required to meet the fair share objectives. They must, however, acknowledge that they are aware of and are actively pursuing the fair share objectives with their procurements.

	Potential MBE Participation	Potential WBE Participation
Cost Category	**Goal**	**Goal**
Construction	19.44%	9.17%
Supplies	25.34%	8.82%
Equipment	16.28%	11.45%
Services	20.41%	13.66%

The fair share goals listed above are required by 40 CFR Part 33 Subpart D and are directly negotiated with EPA Region 6. Entities receiving federal financial assistance are subject to the TWDB's goals and may not be substituted with other agency or program goals.

IV. TWDB APPROVAL SIGNATURE

Signature indicates the form meets DBE Requirements.

DBE Coordinator	Approval Date

Example

ATTACHMENT 2 – AFFIRMATIVE STEPS CERTIFICATION AND GOALS (TWDB-0216)

To download this document, view TWDB-0216 from the TWDB website.

FOR OFFICE USE ONLY
Commitment #_____

TWDB-0216
TEXAS WATER DEVELOPMENT BOARD
AFFIRMATIVE STEPS SOLICITATION REPORT

I. PROJECT INFORMATION

TWDB Project Number	Applicant/Entity Name	Total TWDB Funding Request	Program Type (insert "X" for all that apply)
			☐ Drinking Water SRF (DWSRF) ☐ Clean Water SRF (CWSRF)

Project Name: _____

Solicitation By: ☐ Applicant/Entity OR ☐ Prime Contracted Business: _____

Project Phase: ☐ Prior to Closing ☐ Release of funding for PADs ☐ Construction Contract #_____

II. SOLICITATION METHOD(S) UTILIZED

At least two methods of solicitation are required. Select the method(s) utilized for the solicitation. Copies of the actual postings, direct contact email/phone log, etc. must be attached to this form as support documentation for each method used. Failure to adequately follow these steps will result in the requirement to complete additional steps in order to become compliant.

☐ Newspaper Advertisements ☐ Meetings or Conferences ☐ Trade Association Publications
☐ Minority Media ☐ Internet & Web Postings ☐ Other Government Publications
☐ Direct Contact by Phone, Fax, USPS Mail, or Email*

If using direct contact, entities must solicit to a **minimum of 3 businesses/firms (at least one being a DBE) for each category of contract sought (i.e., construction, supplies, equipment, or services) to demonstrate a Good Faith Effort.*

III. PROJECT BIDDERS LIST:

List on the following table, or provide on a separate list, each business entity directly solicited for procurement or that submitted a bid for consideration.

Instructions for Columns 1 - 4	1 - Full business name (line one) & point of contact (line two) 2 - Business address 3 - Telephone number 4 - Email address for the business
Instructions for Column 5	Enter one of the following procurement or contract categories: **CONSTRUCTION – SUPPLIES – EQUIPMENT – SERVICES** *For detailed definitions, review guidance document, TWDB-0210.*
Instructions for Column 6	Enter the type of business: **MBE** - Minority Business Enterprise, **WBE** - Women-owned Business Enterprise, or **OTHER** - Company or firm is Non-MBE or WBE

Notice: Entities receiving State Revolving Fund financial assistance must create and maintain a Bidders List if the entity is subject to, or chooses to follow, competitive bidding. The Bidders List must include all firms that bid or quoted on contracts under EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs. Entities must keep all Bidders Lists until project completion or the recipient is no longer receiving EPA funding under the loan, whichever is later. Entities with loans totaling less than $250,000 during a state fiscal year are exempt from the Bidders List requirement, but must still meet DBE program requirements. The Bidders List requirement also applies to all Prime Contracted Businesses/Firms that make subcontracting.

Sample

ATTACHMENT 3 – AFFIRMATIVE STEPS CERTIFICATION AND GOALS (TWDB-0217)

To download this document, view TWDB-0217 from the TWDB website.

FOR OFFICE USE ONLY: Commitment #

TWDB-0217
Revised 08/14/2018

TWDB-0217
TEXAS WATER DEVELOPMENT BOARD (TWDB)
PRIME CONSULTANT/CONTRACTOR CERTIFICATION

I. PROJECT INFORMATION

TWDB Project Number	Applicant/Entity Name	Total of TWDB Funding	Program Type (insert "X" for all that apply)
			☐ Drinking Water SRF (DWSRF) ☐ Clean Water SRF (CWSRF)

Prime Consultant/Contractor: _____

Contract Number: _____ **Contract Amount:** _____

II. GOOD FAITH EFFORT (Applicable to all subcontracts awarded by the prime contractor/consultant)

I understand that it is my responsibility to comply with all state and federal regulations and guidance in the utilization of Minority and Women-owned Businesses in procurement. I certify that I will make a "good faith effort" to afford opportunities for Minority Business Enterprise (MBE), and Women-owned Business Enterprise (WBE) by:

1.	Including qualified MBEs and WBEs on procurement solicitation lists
2.	Soliciting potential MBEs and WBEs
3.	Reducing contract size/quantities when economically feasible to permit maximum participation by MBEs and WBEs
4.	Establishing delivery schedules to encourage participation by MBEs and WBEs
5.	Using the services and assistance of the Small Business Administration, Minority Business Development Agency, U.S. Department of Commerce, and Texas Marketplace
6.	Submitting documentation to the Applicant/Entity to verify good faith effort, steps 1-5.
☐	**EXCEPTION**: As the Prime Consultant/Contractor, I certify that I have reviewed the contract requirements and found no available subcontracting opportunities. I also certify that I will fulfill 100 percent of the contract requirements with my own employees and resources. (Check if applicable)

Signature – Prime Consultant/Contractor	Title (print legibly)	Certification Date

III. PROJECT PARTICIPATION ESTIMATES

The Cost Categories mentioned below are goals. These goals are neither standards nor quotas. Recipients of financial assistance are not required to meet the fair share objectives. They must, however, acknowledge that they are aware of and are actively pursuing the fair share objectives with their procurements.

Cost Category	Potential MBE Participation Goal	Potential WBE Participation Goal
Construction	19.44%	9.17%
Supplies	25.34%	8.82%
Equipment	16.28%	11.45%
Services	20.41%	13.66%

The fair share goals listed above are required by 40 CFR Part 33 Subpart D and are directly negotiated with EPA Region 6. Entities receiving federal financial assistance are subject to the TWDB's goals and may not be substituted with other agency or program goals.

IV. TWDB APPROVAL SIGNATURE

Signature indicates the form meets DBE Requirements.

DBE Coordinator	Approval Date

Example

ATTACHMENT 4 – PARTICIPATION SUMMARY (TWDB-0373)

To download this document, view TWDB-0373 from the TWDB website.

FOR OFFICE USE ONLY
Commitment #_____

TWDB-0373
Revised 11/13/2017

TWDB-0373
TEXAS WATER DEVELOPMENT BOARD
PARTICIPATION SUMMARY

I. PROJECT INFORMATION

TWDB Project Number	Applicant/Entity Name	Total TWDB Funding Request	Program Type (insert "X" for all that apply)
			☐ Drinking Water SRF (DWSRF)
			☐ Clean Water SRF (CWSRF)

Project Name: _____

Solicitation By: ☐ Applicant/Entity OR ☐ Prime Contracted Business: _____

Project Phase: ☐ Prior to Closing ☐ Release of funding for PADs ☐ Construction Contract # _____

Instructions	
Column 1	Enter the full name, street address, city/state/zip for each firm awarded a contract for the project.
Column 2	Enter one of the following procurement or contract categories: **CONSTRUCTION – SUPPLIES – EQUIPMENT – SERVICES**
Column 3	Enter the type of business: **MBE (Minority Business Enterprise), WBE (Women-owned Business Enterprise), or OTHER (NOTE: OTHER = Company or firm is Non-MBE or WBE)**
Column 4	Enter the exact amount of the awarded contract.
Column 5	Enter the exact date the contract was executed or the proposed date of contract execution.

If valid MBE/WBE firms are awarded contracts, a copy of their certification is required to be attached with this form for each MBE/WBE business listed.

Notice: Brokers may not be listed below as an MBE or WBE. A broker is a firm that does not perform, manage, or supervise the work of its sub/contract in a manner consistent with the normal business practices for sub/contractors in its line of business. For more specifics, review guidance document, TWDB-0210.

II. LIST OF ACTUAL CONTRACTS/PROCUREMENTS

	Column 1 Name & Address of Contracted Firm/Vendor	Column 2 Procurement Category	Column 3 MBE/WBE Status	Column 4 Contract Amount ($)	Column 5 Contract Execution Date
1.					
2.					
3.					
4.					
5.					
6.					

(Table continues on the next page)

Example

Guidance on State Revolving Fund Project Public Awareness

Overview

In an effort to communicate the positive impact and benefits of State Revolving Fund (SRF) financial assistance, the Environmental Protection Agency (EPA) implemented a new initiative to increase public awareness surrounding the improvements communities receive resulting from SRF financial assistance. It is the desire of the EPA that more communities and citizens of Texas are informed of the direct and tangible benefits that SRF financial assistance provides.

There are now new options available to enhance public awareness of SRF financing:

- Online signage placed on community website or social media outlet
- Press release
- Posters or wall signage in a public building or location
- Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility
- Standard on-site signage

For these purposes, the TWDB has created this guidance, based on EPA's initiative guidance, to assist our customers achieve the goals laid out above.

Table of Contents

To access the various sections, place cursor over the Chapter or page #, then press Ctrl+Click to follow the link.

Chapter	Page Number
Enhanced Public Awareness Program	4
Online & Social Media	5
Press Release, Newsletter, or Periodical	5
Posters or Brochures	6
Standard Project On-Site Signage	7
Exhibit A - Certification Form	8
Exhibit B	9
Exhibit C	10
Texas Water Development Board Style Sheet	11
EPA Logo & Seal Specifications	12

Enhanced Public Awareness Program

Beginning with State Fiscal Year 2016 SRF program year, all recipients of the Clean Water State Revolving Fund (CWSRF) equivalency and the Drinking Water State Revolving Fund (DWSRF) financial assistance must enhance public awareness of their project and of SRF programs by making certain information available to the broadest audience possible relevant to those who will benefit from the project. **This initiative enhances the previous standard sign policy and provides communities with more options to enhance public awareness that are more cost effective than standard signage.**

Communities should consider which method best fits their project and discuss options with TWDB staff as early as the required pre-application conference. The final method will be detailed to the TWDB no later than the pre-construction conference.

Public Awareness Options

There are a number of options available communities can explore to implement this initiative. The option selected should meet all of the basic requirements while remaining cost-effective and accessible to a broad audience. Each recipient of CWSRF equivalency or DWSRF financial assistance must certify that it is compliant with this initiative and detail the method of implementation. A certification form is available for the convenience of the financial assistance recipient: *State Revolving Fund Project Public Awareness Certification*, TWDB form No. 1109A found at the following link and as "Exhibit A" to this guidance:

http://www.twdb.texas.gov/financial/instructions/doc/TWDB-1109-A.pdf

Below are the five acceptable options:

- Online signage placed on community website or social media outlet
- Press release
- Posters or wall signage in a public building or location
- Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility
- Standard on-site signage

Each of the options is explained in greater detail below.

Online & Social Media

Many communities increasingly find that the online forum is the most cost-effective approach to publicizing their SRF programs and reaching a broad audience of stakeholders. Online "signage" should follow the minimum information guidelines below and may appear on the town, community, or facility website, if available. In some cases, communities may be active on social media sites such as Facebook or Twitter. These can be used as an opportunity for publicizing projects and information about how SRF funds are being used in the community. These online announcements/notices may be appropriate for settings where physical signage would not be visible to a wide audience. They can be a more cost-effective option than traditional signs or publicity in print media outlets. This option may be most useful where the community's website is a well-recognized source of information for its residents.

In the case of some projects, such as nonpoint source or sponsorship projects, there might be additional opportunities for online publicity through partner agencies or organizations. This could take place either on the organization's website or again through social media outlets.

Assistance recipients that will implement this requirement through use of online & social media publicity should ensure the following are included:

- Name of facility, project and community
- State agency administering the SRF program, the TWDB
- Project was wholly or partially funded with SRF funding through the EPA
- Brief description of the project

"Exhibit B" to this guidance gives examples of both an online web notice and a Twitter feed.

Press Release, Newsletter, or Periodical

For communities where there is no suitable public space or where advertisement through signage is unlikely to reach community members effectively, projects can be advertised in a community newsletter or similar periodical. For new construction, if a groundbreaking ceremony is to be held, an announcement could publicize or accompany publicity for this event.

Distributing a single prepared statement concisely summarizing the project purpose and the joint funding from the SRF through the EPA and TWDB resources can reach a wide audience as the statement goes through multiple news outlets.

If a recipient decides on a public or media event to publicize the accomplishment of significant events related to construction as a result of SRF support through the EPA, the EPA must be provided with at least a ten working day notice of the event and provided the opportunity to attend and participate. Please contact Associate Director Claudia Hosch, who can be reached at (214) 665-6464 or Hosch.Claudia@epa.gov.

Assistance recipients to implement this requirement through use of a newsletter, periodical, or press release should ensure the following are included:

- Name of facility, project, and community
- State agency administering the SRF program, the TWDB
- Project was wholly or partially funded with SRF funding through the EPA
- Brief description of the project
- Brief listing of water quality benefits to be achieved

"Exhibit C" to this guidance gives an example of a project press release.

Posters or Brochures

Smaller projects, projects located in rural areas, and other efforts may find that it is more cost effective and practical to advertise efforts through creation of a poster or smaller sign. If the project involves nonpoint source or green infrastructure components, those can be described at the discretion of the state or community.

The poster or brochure and acknowledgement should be visible, also containing a website or other source of information for individuals that may be curious about the SRF program. The community could also implement this option as a short pamphlet or brochure that is placed in one of these locations for community members to read.

Posters or brochures should be placed in a public location that is accessible to a wide audience of community members. This can include, but is not limited to:

- Town or City Hall
- Community Center
- Locally owned or operated park or recreational facility
- Public Library
- County/municipal government facilities
- Court house or other public meeting space

Given the low cost for producing multiple copies of the same poster, pamphlet, or brochure, communities can explore options for displaying these posters in several locations simultaneously. This would achieve the overall objective of reaching a broad audience and publicizing the project.

Assistance recipients to implement this requirement through use of posters or brochures should ensure the following are included:

- Name of facility, project and community
- State agency administering the SRF program, the TWDB
- Project was wholly or partially funded with SRF funding through the EPA
- Brief description of the project
- Brief listing of water quality benefits to be achieved

Standard Project On-Site Signage

It is recommended that large projects that involve significant expansion or construction of a new facility elect to publicize through standard signage. This option should be selected for projects where the sign would be near a major road or thoroughfare or where the facility is in a location at which this would effectively publicize the upgrades. Some facilities will not find this an appropriate or cost-effective solution. For example, investing in a large road sign for a facility that is located in a rural area or where access is limited to a smaller service road would likely not be an optimal solution.

Signs can also be located away from the project site if there is another reasonable alternative. For example, a community may elect to place a sign advertising the project near a body of water that receives discharge from a particular facility.

Assistance recipients to implement this requirement through use of a traditional sign should ensure the following are included:

- The name of the facility, project, and community
- Project cost
- State agency administering the SRF program, the TWDB
- The EPA and State Agency logos (EPA logo may only be used on a sign)

Users should download the TWDB-logo.zip file, extract the eps file, and then use Illustrator to extract the embedded logo file.

If the EPA logo is displayed along with logos of other participating entities, the EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project.

As provided in the sign specifications from the EPA Office of Public Affairs (OPA), the EPA logo is the identifier for assistance agreement projects. The TWDB will ensure that recipients comply with the sign specifications provided by the OPA, available at

http://www2.epa.gov/grants/epa-logo-seal-specifications-signage-produce-epa-assistance-agreement-recipients

This guidance outlines the EPA logo & seal specifications for signage produced by EPA assistance agreement recipients.

Exhibit A

TWDB-1109A, Certification Form

Texas Water Development Board
P.O. Box 13231, 1700 N. Congress Ave.
Austin, TX 78711-3231, www.twdb.texas.gov
Phone (512) 463-7847, Fax (512) 475-2053

State Revolving Fund Project Public Awareness Certification

This executed certification covering project public awareness is required of all recipients of Clean Water State Revolving Fund (CWSRF) equivalency and Drinking Water State Revolving Fund financial assistance. The requirement for this certification applies to all effected applications received on or after August 26, 2015.

Name of Entity: _____

TWDB Project Number: _____

Project Name: _____

Method of Implementation: (see guidance)

- ☐ Online signage via website or social media
- ☐ Press release
- ☐ Posters or wall signage
- ☐ Newspaper or periodical advertisement
- ☐ Standard signage

The undersigned hereby certifies that the project referenced above meets the requirements listed in TWDB SRF Public Awareness Guidance, Form 1109A that can be found at the following link.

http://www.twdb.texas.gov/financial/instructions/doc/TWDB-1109.pdf

_____ _____
Signature of Authorized Official Date

_____
Printed Name of Authorized Official

_____
Title of Authorized Official

TWDB Use Only – Review Engineer's Acceptance ☐ Initials _____

Exhibit B

Exhibit B
Online Web Notice & Social Media required elements-EXAMPLE

- Name of Project and community: Collection System Improvements 2015, City of Arlington
- Name of CWSRF administering agency: Texas Water Development Board
- Funded in whole or in part by CWSRF: Wholly funded by CWSRF
- Brief description of project: Replace collection system lines in five different segments throughout the City

or

- Name of Project and community: Collection System Improvements 2015, City of Arlington
- Name of CWSRF administering agency: Texas Water Development Board
- Funded in whole or in part by CWSRF: Partially funded by CWSRF
- Brief description of project: Replace collection system lines in five different segments throughout the City

Exhibit C

Exhibit C
Press Release required elements-EXAMPLE

- Name of Project and community: Collection System Improvements 2015, City of Arlington
- Name of CWSRF administering agency: Texas Water Development Board
- Funded in whole or in part by CWSRF: Wholly funded by CWSRF
- Brief description of project: Replace collection system lines in five different segments throughout the City
- Brief listing of water quality benefits: reduce/eliminate sanitary sewer overflows, improve performance of WW collection system, reduce energy consumption at WWTP by reducing inflow/infiltration

or

- Name of Project and community: Collection System Improvements 2015, City of Arlington
- Name of CWSRF administering agency: Texas Water Development Board
- Funded in whole or in part by CWSRF: Partially funded by CWSRF
- Brief description of project: Replace collection system lines in five different segments throughout the City
- Brief listing of water quality benefits: reduce/eliminate sanitary sewer overflows, improve performance of WW collection system, reduce energy consumption at WWTP by reducing inflow/infiltration

Texas Water Development Board Style Sheet

Texas Water Development Board logo style sheet

Last modified Jan 2017

Texas Water Development Board

C80 M46 Y11 K8
Pantone 647

C23 M6 Y2 K0
Pantone 643

Do not use the logo in any other colors or variations than those on this style sheet

Texas Water Development Board

Minimum size width = 1 inch

Texas Water Development Board

Too small

Assistance agreement recipients are authorized to use the TWDB name and logo in accordance with the format identified in these guidelines and only for printed materials such as onsite signage, advertisements, and wall signage produced to enhance public awareness of the State Revolving Fund (SRF) project or the SRF program.

Texas Water Development Board

Grayscale

C0 M0 Y0 K65
Pantone Cool Gray 9

C0 M0 Y0 K20
Pantone Cool Gray 2

Texas Water Development Board

Black

C0 M0 Y0 K100
Pantone Black

Texas Water Development Board

White

C0 M0 Y0 K0
Pantone -

Always:

- Position the logo for maximum impact and leave adequate space around the logo to ensure visibility and legibility.

Do not:

- Use the logo in text;
- Redesign, redraw, animate, modify, distort, or alter the proportions of the logo;
- Place the logo over a pattern or design;
- Rotate or render the logo three-dimensionally;
- Add words, images, or any other new elements to the logo.

Examples of Do Not:

The Texas Water Development Board logo is our most valuable brand asset.

The Texas Water Development Board logo is our most valuable brand asset.

EPA Logo & Seal Specifications

EPA LOGO & SEAL SPECIFICATIONS FOR SIGNAGE PRODUCED BY EPA ASSISTANCE AGREEMENT RECIPIENTS

EPA's logo is a two-leaved flower, without stem, accompanied by the Agency's initials to the right. The EPA logo is the primary identifier for use on construction grant signage. Assistance agreement recipients are not required to receive EPA approval to use the EPA logo when used in accordance with the terms and conditions of their assistance agreement award.

The official seal of EPA is circular and is comprised of the two-leaved flower, with stem, encircled by the title UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. The EPA seal may be used only when official comparable seals are used and the recipient has received prior written EPA approval.

It is important that the EPA logo and seal always be reproduced with consistent high quality. The seal and logo must remain intact and unchanged (for example, don't use the flower from the seal by itself). The logo and seal may only be displayed using either the standard color scheme or a single color that complements the background where it appears.

COLOR AND SPACING

- The entire logo and seal must appear in black, gray, or any uniform color or knock out white on a dark background. The flower and text may not be different colors. The flower itself may not contain more than one color. The seal can be monotone or full color, based on the rest of the seals that it's placed with.
- The relationship between the flower portion of the logo and Helvetica type should never be shifted or adjusted.

PMS 362

PMS 660

Process Black at 70%

Process Black 100%

Knock out on a dark color

PREFERRED USE

Use the preferred presentation of the logo on products that do not have enough space for the full logo with text. It may also be used in the presence of other logos.

SIZE AND LOGO WITH OTHER LOGOS

It's important that all parts of the EPA logo be readable. The EPA logo should not be reproduced at sizes any smaller than 1.0" height on a sign. There are no maximum size restrictions as long as the clear space requirements are met. The logo should be made the same relative size as the other logos on the signage.

SIZE AND SEAL WITH OTHER SEALS

When there are multiple state or Federal seals/circular logos, the use of the EPA seal is appropriate with prior written EPA approval. The EPA seal should be the same size as the seals that accompany it and should be a minimum of 3 inches in height.

IMPROPER LOGO USAGE

STATE OF TEXAS §
§
COUNTY OF CAMERON §

SITE CERTIFICATE

Before me, the undersigned notary, on this day personally appeared Charles F. Ortiz, a person whose identity is known to me or who has presented to me a satisfactory proof of identity. After I administered an oath, this person swore to the following:

(1) My name is Charles F. Ortiz. I am over 18 years of age and I am of sound mind, and capable of swearing to the facts contained in this Site Certificate. The facts stated in this certificate are within my personal knowledge and are true and correct.

(2) I am an authorized representative of Laguna Madre Water District, an entity that has filed an application for financial assistance with the Texas Water Development Board for a (water) (wastewater) project.

Please complete only those sections that apply to your project:

LEGAL CERTIFICATION – LEASE/CONTRACT

I certify that: _____
(Legal Name of Applicant, i.e., City, District, etc.)

has executed a written lease or other contractual agreement to use the property needed for this (water)(wastewater) project that extends through _____(date), the life of the Texas Water Development Board loan or grant that will be used to finance this project, either in whole or in part. A copy of this lease or agreement is attached hereto.

LEGAL CERTIFICATION – PROPERTY EASEMENT

I certify that: Laguna Madre Water District
(Legal Name of Applicant, i.e., City, District, etc.)

has executed an express easement to use the property needed for this (water) (wastewater) project that extends through the life of the Texas Water Development Board loan or grant that will be used to finance this project, either in whole or in part. The express easement to use the property needed for this (water) (wastewater) project extends through perpetuity (date). A copy of the express easement agreement is attached hereto.

LEGAL CERTIFICATION – OWNERSHIP INTEREST

I certify that_____
(Legal Name of Applicant, e.g. City, District, etc.)

◯ Option A: has acquired the necessary real property interest, as evidenced by fee simple purchase, deed, fully executed earnest money contracts, or completion of eminent domain proceedings; that such acquisition will guarantee access and egress; and such interest will contain the necessary easements, rights of way, or unrestricted use as is required for the project being financed by the Texas Water Development Board. The legal description is referenced below.

◯ Option B: is in the process of acquiring the necessary real property interest, as evidenced by earnest money contracts, contracts for sale, firm option agreements to purchase the subject property, or the initiation of eminent domain procedures; that such acquisition will guarantee access and egress; and such interest will contain the necessary easements, rights of way, or unrestricted use as is required for the project being financed by the Texas Water Development Board. The legal description is referenced below. The anticipated date of acquisition is: _____.

The property has been/will be acquired with the use of eminent domain: ◯ True ◯ False

Location and Description of Property Interests acquired for Project:

Any deeds or other instruments required to be recorded to protect the title(s) held by _____ (Legal Name of Applicant) have been recorded or filed for the record in the County deed records or other required location. The following documents are attached hereto:

Description of documents that were used or will be used to acquire the property:

EXECUTED this 11th day of May, 20 21.

Charles F. Ortiz (Signature)

Charles F. Ortiz, P.E. (Print Name)

District Engineer (Title)

Sworn to and subscribed before me by Charles F. Ortiz on this 11th day of May, 20 21.

Daisy Patricia Martinez (Notary Public in and for the State of Texas)

DAISY PATRICIA MARTINEZ
Notary Public, State of Texas
Comm. Expires 03-08-2023
Notary ID 128545056

[SEAL]

ED-101
Rev 9/16

VG-1145-2021-20410

Cameron County
Sylvia Garza-Perez
Cameron County Clerk

Instrument Number: 2021-20410

Real Property Recordings

Recorded On: May 10, 2021 03:30 PM

Number of Pages: 8

" Examined and Charged as Follows: "

Total Recording: $60.00

********** THIS PAGE IS PART OF THE INSTRUMENT **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	20410
Receipt Number:	20210510000209
Recorded Date/Time:	May 10, 2021 03:30 PM
User:	Angela L
Station:	cclerk18_07

Record and Return To:

LAGUNA MADRE WATER DISTRICT
SUPLY. DIST #1

PORT ISABEL TX 78578

STATE OF TEXAS
Cameron County
I hereby certify that this Instrument was filed in the File Number sequence on the date/time printed hereon, and was duly recorded in the Official Records of Cameron County, Texas

Sylvia Garza-Perez
Cameron County Clerk
Cameron County, TX

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

LAGUNA MADRE WATER DISTRICT UTILITY AND ACCESS EASEMENT

STATE OF TEXAS §
§ **KNOW ALL MEN BY THESE PRESENTS**
COUNTY OF CAMERON §

Date: January 14, 2021

Grantor: CITY OF PORT ISABEL, TEXAS

Grantor's Mailing Address: 305 E. Maxan Street
Port Isabel, Cameron County, Texas 78578

Grantee: LAGUNA MADRE WATER DISTRICT, a duly organized and operating municipal utility district, and conservation and reclamation district, and its assigns, for the use and benefit of all entities, public or private, providing public water and sewer services

Grantee's Mailing Address: 105 Port Road
Port Isabel, Texas 78578

Easement Property: Being a 0.010 acre (427.15 sq. ft.) utility easement out of a lot labeled "Park", Map of Plat No. Three of Point Isabel, in the City of Port Isabel, Cameron County, Texas, according to the map or plat thereof recorded in Volume 7, Page 57, Map Records of Cameron County, Texas; said 0.010 acre tract of land being described by metes and bounds and shown in **Exhibits "A"** and **"B"** attached hereto and incorporated herein (the "Easement"), together with the right to use as much of the surface of the property in the Easement as may be reasonably necessary for the installation, construction, maintenance and removal of the Facilities, as that term is defined below.

Easement Purpose: For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of public sanitary sewer and wastewater collection system, water system, and related improvements and facilities, including water and sewer distribution pipelines (including but not limited to pipelines installed and maintained on adjacent property for the purpose of connecting buildings and improvements to a wastewater collection system), meters, valves and any other appurtenances as needed (collectively, the "Facilities").

Consideration: The sum of ten dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor.

Reservations from Conveyance:	None
Exceptions to Warranty:	This conveyance is made by Grantor and accepted by Grantee subject to any and all existing easements, covenants, rights-of-way, conditions, restrictions, outstanding mineral interests, royalty interests, if any, relating to the Easement Property, to the extent, and only to the extent, that the same may be in force and effect, and either shown of record in the Office of the County Clerk of Cameron County, Texas or that may be apparent on the Easement Property.
Grant of Utility Easement:	Subject to the terms and provisions hereof, Grantor, for the Consideration, grants, sells and conveys to Grantee and Grantee's successors and assigns an easement (the "Easement"), over, on, under, and across the Easement Property for the Easement Purpose, together with (i) the right of ingress and egress at all times over, on, and across the Easement Property for use of the Easement Property for the Easement Purpose, (ii) the right to eliminate any encroachments in the Easement Property that interfere in any way or are inconsistent with the rights granted to Grantee under this instrument for the Easement Purpose as determined by Grantee in its reasonable discretion, and (iii) all and singular rights and appurtenances thereto in any way belonging, to have and to hold the Easement to Grantee and Grantee's successors and assigns forever. There are no liens, attachments, or other encumbrances which will affect the title or right of the Grantor to convey this Easement to the Grantee for the Easement Purpose. If such condition does exist, a signature with acknowledgement shall be included and made a part of this document conveying the rights and privileges contained herein, and subordinating any such lien or encumbrance to the easement granted herein. Grantor binds itself and Grantor's successors and assigns to warrant and forever defend the Easement and rights granted herein unto Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or attempting to claim the Easement or any part of the Easement.
Terms and Conditions:	The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is nonexclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's successors and assigns. The rights granted to Grantee in this Easement are assignable in whole or in part.

2. *Duration of Easement.* The Easement shall commence on the effective date of this Agreement and shall run with the land and continue in full force and effect perpetually.

3. *Reservation of Rights.* Grantee's right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor's successors and assigns the right to use all or part of the Easement Property in conjunction with Grantee as long as such use by Grantor and Grantor's successors and assigns does not, in the sole judgment of Grantee, interfere with the use of the Easement Property by Grantee for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property in conjunction with Grantee, as long as such further conveyance is subject to the terms of this Agreement. Notwithstanding the foregoing, Grantor shall not place or construct any permanent improvements of any kind within the Easement Property.

4. *Improvement and Maintenance of Easement Property*. Grantor shall not make changes in the grade, elevation and contour of the land within the Easement without the prior written consent of Grantee. Grantor shall not directly or indirectly interfere with Grantee's efficient, safe or convenient use of the Easement. Grantee has the right to eliminate any encroachments into the Easement Property and to prevent the construction or placement within the Easement of any permanent building, structures, materials or other obstructions which may, in the sole judgment of the Grantee, interfere with the Grantee's use of the Easement or impede the safe use of Grantee's equipment in the Easement. If such obstruction(s) are constructed or otherwise placed within the Easement, without Grantee's prior written consent, the Grantee shall have the right to remove same from such space and seek payment from the Grantor for the reasonable cost of such removal. Grantee has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Grantee's sole discretion, subject to performance of Grantee's obligations under this agreement. Grantee shall maintain the Easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantor's premises. It is understood and agreed that the Consideration herein paid includes payment for all damages for the initial construction and ordinary operation and maintenance of the Facilities on the Easement Property for the Easement Purpose. Grantee shall not be liable for damages caused by keeping the Easement Property clear of any encroachments or obstructions. All parts of the Facilities installed on the Easement Property shall remain the exclusive property of Grantee. Improvement and maintenance of the Easement Property will be at the sole expense of the Grantee. For any improvement or maintenance, and for any purposes under this agreement, Grantee must promptly restore the surface of the Easement Property to an equal or better condition as provided upon completion of initial construction.

5. *Equitable Rights of Enforcement*. This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. *Binding Effect*. This agreement binds and inures to the benefit of the parties and their respective successors and permitted assigns.

7. *Choice of Law*. This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

8. *Entire Agreement*. This grant of Utility and Access Easement constitutes the entire agreement between Grantor and Grantee relating to the Easement described herein, and any prior agreement, promises, negotiations, or representations not expressly set forth in this agreement are of no force and effect. Any amendment to this agreement shall be of no force and effect unless it is in writing and signed by Grantor and Grantee.

9. *Counterparts*. This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

10. *No Partnership*. The parties hereto expressly acknowledge and agree that Grantor and Grantee have not formed, and are not hereby forming, with Grantee or any other party, a partnership, joint venture or any other

similar entity, and this agreement is not intended, and shall not be construed, to create any such entity or relationship.

11. *Waiver of Default*. It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

12. *Further Assurances*. Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

13. *Legal Construction*. If any provision in this agreement is for any reason unenforceable, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. This agreement will not be construed more or less favorably between parties by reason of authorship or origin of language.

14. *Notices*. Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United State Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

15. *Recitals*. Any recitals in this agreement are represented by the parties to be accurate and constitute a part of the substantive agreement.

IN WITNESS WHEREOF, this Grant of a Utility and Access Easement has been executed as of this 5th day of May, 2021.

[The remainder of this page is left blank intentionally.]

GRANTOR:

CITY OF PORT ISABEL, TEXAS

By: Juan Jose Zamora

Attest: _____

Printed Name: John Sandwel

Title: Asst. City Manager

STATE OF TEXAS §
§
COUNTY OF CAMERON §

This instrument was acknowledged before me on the 5th day of May, 2021, by Juan Jose Zamora, Mayor of the City of Port Isabel, Texas.

Maria S. Alcocer
Notary Public, State of Texas

MARIA S ALCOCER
Notary ID #11309434
My Commission Expires
December 27, 2024

GRANTEE:

LAGUNA MADRE WATER DISTRICT

By: _____

Printed Name: Scott D. Friedman

Title: Laguna Madre Water District, Chairman

STATE OF TEXAS §
§
COUNTY OF CAMERON §

This instrument was acknowledged before me on the 12 day of May, 2021, by Scott D. Friedman

Daisy Patricia Martinez
Notary Public, State of Texas

DAISY PATRICIA MARTINEZ
Notary Public, State of Texas
Comm. Expires 03-08-2023
Notary ID 128545056

Charge and Return to:
Laguna Madre Water District
105 Port Road
Port Isabel, Texas 78578

EXHIBIT "A"

VASQUEZ SURVEYING INC.
4000 Boca Chica Boulevard
Brownsville, Texas 78521
(956) 541-9826 Fax (956) 544-4177

November 23, 2020
Job # 19 4897 and 20 5143

Metes and Bounds Description of a 0.010 Acre Tract; Utility Easement

BEING 0.010 ACRE TRACT (427.15 SQ. FT.) OF LAND MORE OR LESS OUT OF A LOT LABELED "PARK", MAP OF PLAT NO. THREE OF POINT ISABEL, IN THE CITY OF PORT ISABEL, CAMERON COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 7, PAGE 57 MAP RECORDS OF CAMERON COUNTY, TEXAS; SAID 0.010 ACRE TRACT OF LAND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

COMMENCING, AT THE NORTHWEST CORNER OF LOT 12 A, BLOCK 6, MAP OF PLAT NO. ONE OF POINT ISABEL SAME POINT BEING ON THE EAST RIGHT OF WAY LINE OF N. YTURRIA ST. (60 FT. RIGHT OF WAY), **THENCE,** LEAVING THE EAST RIGHT OF WAY LINE OF SAID N. YTURRIA ST. SOUTH 54 DEG. 51 MIN., 30 SEC., WEST A DISTANCE OF 60.0 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF SAID N. YTURRIA ST., FOR THE **POINT OF BEGINNING** OF THIS TRACT;

THENCE, CONTIGUOUS WITH THE WEST RIGHT OF WAY LINE OF SAID N. YTURRIA ST. SOUTH 35 DEG., 08 MIN., 30 SEC., EAST, A DISTANCE OF 13.27 FEET FOR THE SOUTHEAST CORNER OF THIS TRACT;

THENCE, LEAVING THE WEST RIGHT OF WAY LINE OF SAID N. YTURRIA ST. SOUTH 53 DEG., 56 MIN., 23 SEC. WEST, A DISTANCE OF 10.34 FEET TO A POINT, FOR THE SOUTHWEST CORNER OF THIS TRACT;

THENCE, NORTH 35 DEG., 10 MIN., 51 SEC., WEST, A DISTANCE OF 41.61 FEET TO A POINT FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE, NORTH 57 DEG., 52 MIN., 26 SEC., EAST, A DISTANCE OF 10.38 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF SAID N. YTURRIA ST. FOR THE NORTHEAST CORNER OF THIS TRACT;

THENCE, CONTIGUOUS WITH THE WEST RIGHT OF WAY LINE OF SAID N. YTURRIA ST., SOUTH 35 DEG., 08 MIN., 30 SEC., EAST, A DISTANCE OF 27.63 FEET TO THE **POINT OF BEGINNING:**

CONTAINING, 0.010 ACRES OF LAND, MORE OF LESS.

SUBJECT TO ANY AND ALL EASEMENTS, RESTRICTIONS, DEDICATIONS AND/OR EXCEPTIONS THAT MIGHT BE OF RECORDS.

Meridian of Plat No. Three of Point Isabel

J.L. Vasquez
Registered Professional Land
Surveyor No. 5739

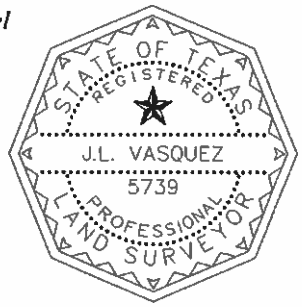
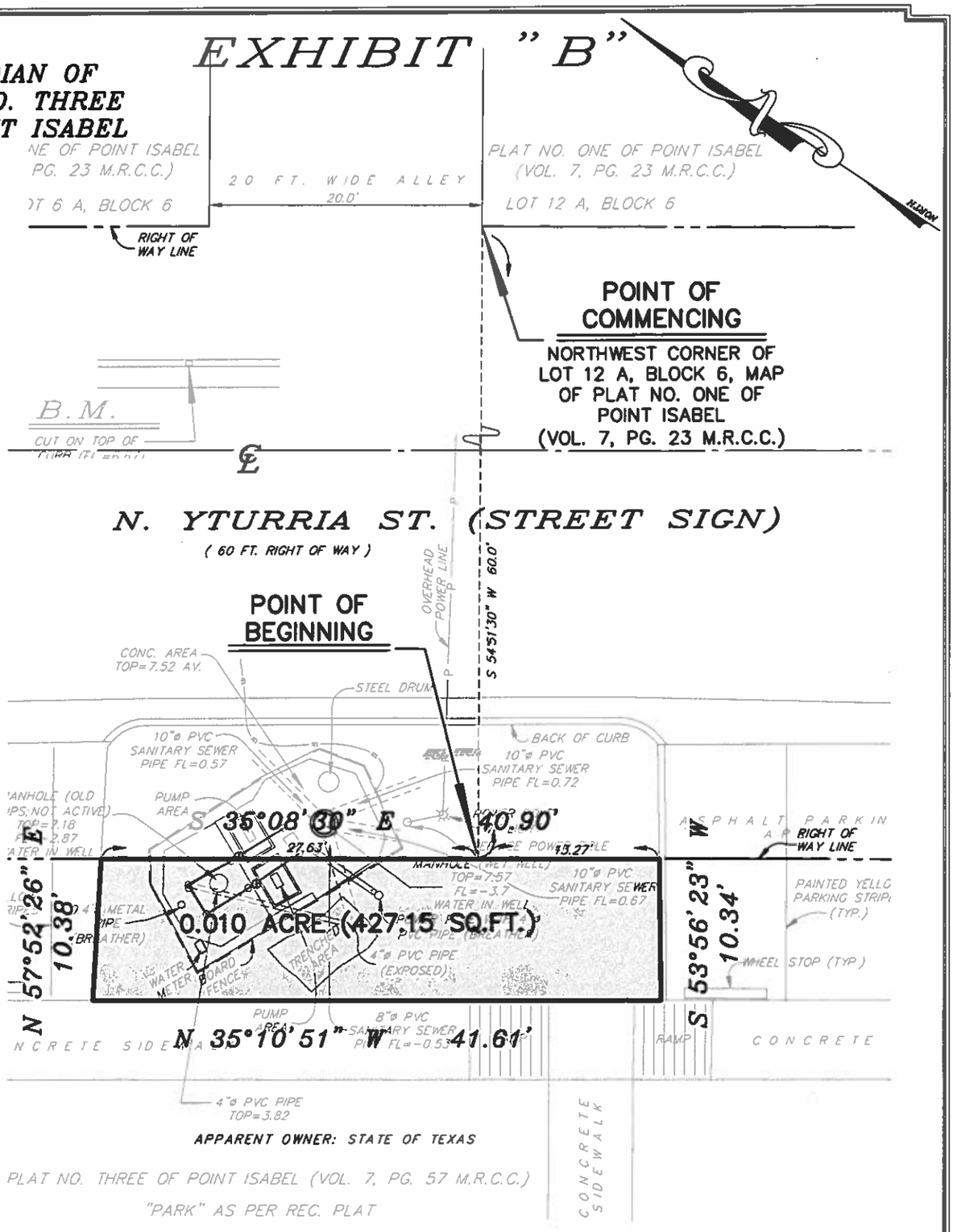


EXHIBIT "B"

MERIDIAN OF PLAT NO. THREE OF POINT ISABEL



MAP SHOWING A PROPOSED UTILITY EASEMENT

BEING 0.010 ACRE TRACT (427.15 SQ. FT.) OF LAND MORE OR LESS OUT OF A LOT LABELED "PARK", MAP OF PLAT NO. THREE OF POINT ISABEL, IN THE CITY OF PORT ISABEL, CAMERON COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 7, PAGE 57, MAP RECORDS OF CAMERON COUNTY, TEXAS.

PREPARED FOR:

FREESE AND NICHOLS

SCALE: 1"=10'

ALL DIMENSIONS ARE IN DECIMAL OF A FOOT UNLESS OTHERWISE NOTED.

STATE OF TEXAS
REGISTERED
J.L. VASQUEZ
5739
PROFESSIONAL
LAND SURVEYOR

Date: 11-24-2020

EXHIBIT ID 9

FIRM NO. 10084100

VASQUEZ SURVEYING INC.

4000 BOCA CHICA BLVD.
BROWNSVILLE, TEXAS 78521
Phone: (956) 541-9826
Cell: (956) 466-9680
Fax: (956) 544-4177

G.F. NO. N/A

JOB NO. 19 4897

T.G. 10-2020

FILED FOR RECORD
AT 3:20 O'CLOCK P M

MAY 10 2021

SYLVIA GARZA-PEREZ
CAMERON COUNTY, CLERK
DOC No. 2021-20900
By _____ Deputy

VG-1145-2021-20409

Cameron County
Sylvia Garza-Perez
Cameron County Clerk

Instrument Number: 2021-20409

Real Property Recordings

Recorded On: May 10, 2021 03:30 PM

Number of Pages: 8

" Examined and Charged as Follows: "

Total Recording: $60.00

********** THIS PAGE IS PART OF THE INSTRUMENT **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	20409
Receipt Number:	20210510000209
Recorded Date/Time:	May 10, 2021 03:30 PM
User:	Angela L
Station:	cclerk18_07

Record and Return To:

LAGUNA MADRE WATER DISTRICT
SUPLY. DIST #1

PORT ISABEL TX 78578

STATE OF TEXAS
Cameron County
I hereby certify that this Instrument was filed in the File Number sequence on the date/time printed hereon, and was duly recorded in the Official Records of Cameron County, Texas

Sylvia Garza-Perez
Cameron County Clerk
Cameron County, TX

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

LAGUNA MADRE WATER DISTRICT UTILITY AND ACCESS EASEMENT

STATE OF TEXAS	§	
	§	**KNOW ALL MEN BY THESE PRESENTS**
COUNTY OF CAMERON	§	

Date: May 3, 2021

Grantor: PIZZA HUT OF SOUTH VALLEY INC

Grantor's Mailing Address: 2101 N 23RD St
McAllen, Cameron County, Texas 78501-6127

Grantee: LAGUNA MADRE WATER DISTRICT, a duly organized and operating municipal utility district, and conservation and reclamation district, and its assigns, for the use and benefit of all entities, public or private, providing public water and sewer services

Grantee's Mailing Address: 105 Port Road
Port Isabel, Texas 78578

Easement Property: Being a 0.101 acre (4,380 sq. ft.) utility easement out of a 1.251 Acre Tract as recorded in Volume 1669, Page 157 Official Records in the City of Port Isabel, Cameron County, Texas; said 0.101 acre tract of land being described by metes and bounds and shown in **Exhibits "A"** and **"B"** attached hereto and incorporated herein (the "Easement"), together with the right to use as much of the surface of the property in the Easement as may be reasonably necessary for the installation, construction, maintenance and removal of the Facilities, as that term is defined below.

Easement Purpose: For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of public sanitary sewer and wastewater collection system, water system, and related improvements and facilities, including water and sewer distribution pipelines (including but not limited to pipelines installed and maintained on adjacent property for the purpose of connecting buildings and improvements to a wastewater collection system), meters, valves and any other appurtenances as needed (collectively, the "Facilities").

Consideration: The sum of ten dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor.

Reservations from Conveyance: None

Exceptions to Warranty: This conveyance is made by Grantor and accepted by Grantee subject to any and all existing easements, covenants, rights-of-way, conditions, restrictions, outstanding mineral interests, royalty interests, if any, relating to the Easement Property, to the extent, and only to the extent, that the same may be in force and effect, and either shown of record in the Office of the County Clerk of Cameron County, Texas or that may be apparent on the Easement Property.

Grant of Utility Easement: Subject to the terms and provisions hereof, Grantor, for the Consideration, grants, sells and conveys to Grantee and Grantee's successors and assigns an easement (the "Easement"), over, on, under, and across the Easement Property for the Easement Purpose, together with (i) the right of ingress and egress at all times over, on, and across the Easement Property for use of the Easement Property for the Easement Purpose, (ii) the right to eliminate any encroachments in the Easement Property that interfere in any way or are inconsistent with the rights granted to Grantee under this instrument for the Easement Purpose as determined by Grantee in its reasonable discretion, and (iii) all and singular rights and appurtenances thereto in any way belonging, to have and to hold the Easement to Grantee and Grantee's successors and assigns forever. There are no liens, attachments, or other encumbrances which will affect the title or right of the Grantor to convey this Easement to the Grantee for the Easement Purpose. If such condition does exist, a signature with acknowledgement shall be included and made a part of this document conveying the rights and privileges contained herein, and subordinating any such lien or encumbrance to the easement granted herein. Grantor binds itself and Grantor's successors and assigns to warrant and forever defend the Easement and rights granted herein unto Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or attempting to claim the Easement or any part of the Easement.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is nonexclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's successors and assigns. The rights granted to Grantee in this Easement are assignable in whole or in part.

2. *Duration of Easement.* The Easement shall commence on the effective date of this Agreement and shall run with the land and continue in full force and effect perpetually.

3. *Reservation of Rights.* Grantee's right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor's successors and assigns the right to use all or part of the Easement Property in conjunction with Grantee as long as such use by Grantor and Grantor's successors and assigns does not, in the sole judgment of Grantee, interfere with the use of the Easement Property by Grantee for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property in conjunction with Grantee, as long as such further conveyance is subject to the terms of this Agreement. Notwithstanding the foregoing, Grantor shall not place or construct any permanent improvements of any kind within the Easement Property.

4. *Improvement and Maintenance of Easement Property*. Grantor shall not make changes in the grade, elevation and contour of the land within the Easement without the prior written consent of Grantee. Grantor shall not directly or indirectly interfere with Grantee's efficient, safe or convenient use of the Easement. Grantee has the right to eliminate any encroachments into the Easement Property and to prevent the construction or placement within the Easement of any permanent building, structures, materials or other obstructions which may, in the sole judgment of the Grantee, interfere with the Grantee's use of the Easement or impede the safe use of Grantee's equipment in the Easement. If such obstruction(s) are constructed or otherwise placed within the Easement, without Grantee's prior written consent, the Grantee shall have the right to remove same from such space and seek payment from the Grantor for the reasonable cost of such removal. Grantee has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Grantee's sole discretion, subject to performance of Grantee's obligations under this agreement. Grantee shall maintain the Easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantor's premises. It is understood and agreed that the Consideration herein paid includes payment for all damages for the initial construction and ordinary operation and maintenance of the Facilities on the Easement Property for the Easement Purpose. Grantee shall not be liable for damages caused by keeping the Easement Property clear of any encroachments or obstructions. All parts of the Facilities installed on the Easement Property shall remain the exclusive property of Grantee. Improvement and maintenance of the Easement Property will be at the sole expense of the Grantee. For any improvement or maintenance, and for any purposes under this agreement, Grantee must promptly restore the surface of the Easement Property to an equal or better condition as provided upon completion of initial construction.

5. *Equitable Rights of Enforcement*. This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. *Binding Effect*. This agreement binds and inures to the benefit of the parties and their respective successors and permitted assigns.

7. *Choice of Law*. This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

8. *Entire Agreement*. This grant of Utility and Access Easement constitutes the entire agreement between Grantor and Grantee relating to the Easement described herein, and any prior agreement, promises, negotiations, or representations not expressly set forth in this agreement are of no force and effect. Any amendment to this agreement shall be of no force and effect unless it is in writing and signed by Grantor and Grantee.

9. *Counterparts*. This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

10. *No Partnership*. The parties hereto expressly acknowledge and agree that Grantor and Grantee have not formed, and are not hereby forming, with Grantee or any other party, a partnership, joint venture or any other

similar entity, and this agreement is not intended, and shall not be construed, to create any such entity or relationship.

11. *Waiver of Default*. It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

12. *Further Assurances*. Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

13. *Legal Construction*. If any provision in this agreement is for any reason unenforceable, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. This agreement will not be construed more or less favorably between parties by reason of authorship or origin of language.

14. *Notices*. Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United State Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

15. *Recitals*. Any recitals in this agreement are represented by the parties to be accurate and constitute a part of the substantive agreement.

IN WITNESS WHEREOF, this Grant of a Utility and Access Easement has been executed as of this 7th day of May, 2021.

[The remainder of this page is left blank intentionally.]

GRANTOR:

PIZZA HUT OF SOUTH VALLEY INC

By: DB

Attest: Charles Ortiz

Printed Name: Charles Ortiz

Title: District Engineer

STATE OF TEXAS §
§
COUNTY OF CAMERON §

This instrument was acknowledged before me on the 7th day of May, 2021, by Douglas Brian Edwards

DAISY PATRICIA MARTINEZ
Notary Public, State of Texas
Comm. Expires 03-08-2023
Notary ID 128545056

Daisy Patricia Martinez
Notary Public, State of Texas

GRANTEE:

LAGUNA MADRE WATER DISTRICT

By:

Printed Name: Scott D. Friedman

Title: Chairman

STATE OF TEXAS §
§
COUNTY OF CAMERON §

This instrument was acknowledged before me on the 10th day of May, 2021, by Scott D. Friedman.

Daisy Patricia Martinez
Notary Public, State of Texas

Charge and Return to:
Laguna Madre Water District
105 Port Road
Port Isabel, Texas 78578

DAISY PATRICIA MARTINEZ
Notary Public, State of Texas
Comm. Expires 03-08-2023
Notary ID 128545056

EXHIBIT "A"

VASQUEZ SURVEYING INC.
4000 Boca Chica Boulevard
Brownsville, Texas 78521
(956) 541-9826 Fax (956) 544-4177

April 5, 2021
Job # 19 4897 and 20 5143

Metes and Bounds Description of a 0.101 Acre Tract; 20 ft. Wide Utility Easement

BEING 0.101 ACRE TRACT (4,380 SQ. FT.) OF LAND MORE OR LESS OUT OF A 1.251 ACRE TRACT AS RECORDED IN VOLUME 1669, PAGE 157 OFFICIAL RECORDS, IN THE CITY OF PORT ISABEL, CAMERON COUNTY, TEXAS; SAID 0.101 ACRE TRACT OF LAND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

BEGINNING, AT THE SOUTHWEST CORNER OF SAID 1.251 ACRE TRACT SAID POINT BEING ON THE EXISTING NORTH RIGHT OF WAY LINE OF SH 100 (RIGHT OF WAY VARIES), FOUND ½" IRON ROD N 83°36'25" E 0.64' FROM LOT CORNER FOR THE SOUTHWEST CORNER AND **POINT OF BEGINNING** OF THIS TRACT;

THENCE, LEAVING THE NORTH RIGHT OF WAY LINE OF SAID SH 100, SAME BEING THE SOUTH BOUNDARY LINE OF SAID 1.251 ACRE TRACT AND CONTIGUOUS WITH THE WEST BOUNDARY LINE OF SAID 1.251 ACRE TRACT, NORTH 08 DEG. 47 MIN., 30 SEC., EAST A DISTANCE OF 20.00 FEET TO A ½" IRON ROD WITH A YELLOW PLASTIC ID CAP STAMPED "VASQUEZ SURV 5739" SET, ON A CONVEX CURVE WITH A RADIUS OF 2,268.78 FEET FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE, LEAVING THE WEST BOUNDARY LINE OF SAID 1.251 ACRE TRACT AND ALONG THE CURVE TO THE LEFT A CURVE LENGTH OF 102.56 FEET HAVING A CHORD: SOUTH 81°28'58" EAST A DISTANCE OF 102.56 FEET TO A NAIL SET, FOR A CORNER OF THIS TRACT;

THENCE, SOUTH 82 DEG. 46 MIN., 40 SEC., EAST, A DISTANCE OF 114.90 FEET TO A ½" IRON ROD WITH A YELLOW PLASTIC ID CAP STAMPED "VASQUEZ SURV 5739" SET ON THE WEST BOUNDARY LINE OF SAID 1.251 ACRE TRACT FOR THE NORTHEAST CORNER OF THIS TRACT;

THENCE, CONTIGUOUS WITH THE EAST BOUNDARY LINE OF SAID 1.251ACRE TRACT, SOUTH, A DISTANCE OF 20.16 FEET TO A ½" IRON ROD WITH A YELLOW PLASTIC ID CAP STAMPED "VASQUEZ SURV 5739" SET, ON THE NORTH RIGHT OF WAY LINE OF SAID STATE HIGHWAY 100, SAME BEING THE SOUTHEAST CORNER OF SAID 1.251 ACRE TRACT, FOR THE SOUTHEAST CORNER OF THIS TRACT;

THENCE, LEAVING THE EAST BOUNDARY LINE OF SAID 1.251 ACRE TRACT, AND CONTIGUOUS WITH THE NORTH RIGHT OF WAY LINE OF SAID STATE HIGHWAY 100 SAME BEING THE SOUTH BOUNDARY LINE OF SAID 1.251 ACRE TRACT, NORTH 82 DEG., 46 MIN., 40 SEC., WEST, A DISTANCE OF 117.43 FEET TO A NAIL SET, FOR A CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2,288.78 FEET, FOR A CORNER OF THIS TRACT:

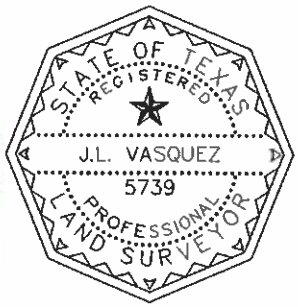
THENCE, CONTIGUOUS WITH THE NORTH RIGHT OF WAY LINE OF SAID STATE HIGHWAY 100 SAME BEING THE SOUTH BOUNDARY LINE OF SAID 1.251 ACRE TRACT AND ALONG SAID CURVE TO THE RIGHT A CURVE LENGTH OF 103.11 FEET HAVING A CHORD: NORTH 81°29'14" WEST A DISTANCE OF 103.10 FEET TO THE **POINT OF BEGINNING**:

CONTAINING, 0.101 ACRES OF LAND, MORE OF LESS.

SUBJECT TO ANY AND ALL EASEMENTS, RESTRICTIONS, DEDICATIONS AND/OR EXCEPTIONS THAT MIGHT BE OF RECORDS.

Meridian of 1.80 Acre Tract

J.L. Vasquez
Registered Professional Land
Surveyor No. 5739



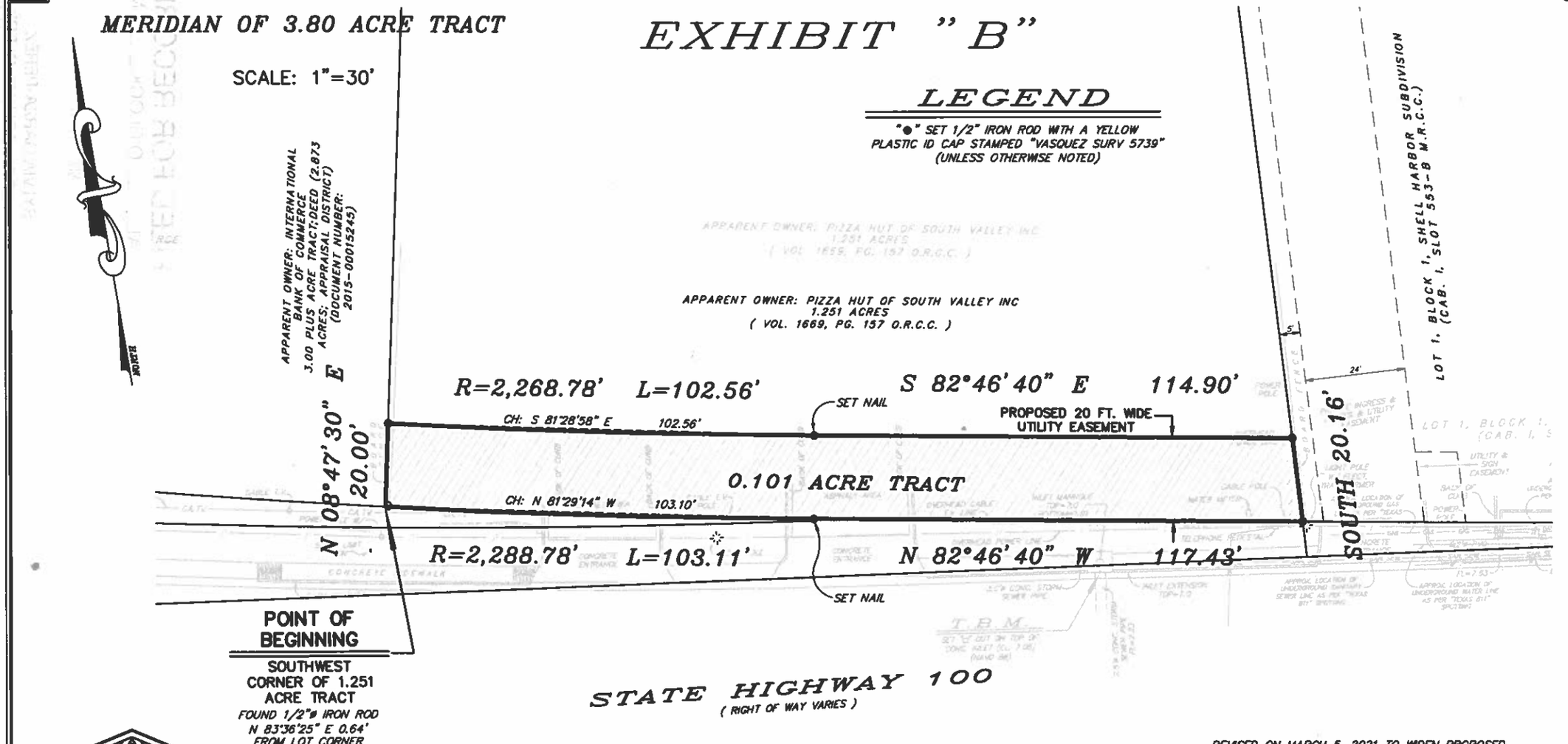
MERIDIAN OF 3.80 ACRE TRACT

EXHIBIT "B"

SCALE: 1"=30'

LEGEND

"●" SET 1/2" IRON ROD WITH A YELLOW PLASTIC ID CAP STAMPED "VASQUEZ SURV 5739" (UNLESS OTHERWISE NOTED)



REVISED ON MARCH 5, 2021 TO WIDEN PROPOSED EASEMENT FROM 15 FT. TO 20 FT. WIDE.
ALL DIMENSIONS ARE IN DECIMAL OF A FOOT UNLESS OTHERWISE NOTED.

STATE OF TEXAS
REGISTERED
J. L. VASQUEZ
5739
PROFESSIONAL
LAND SURVEYOR

Date: 04-05-2021

MAP SHOWING A PROPOSED 20 FT. WIDE UTILITY EASEMENT

BEING 0.101 ACRE TRACT (4,380 SQ. FT.) OF LAND MORE OR LESS OUT OF A 1.251 ACRE TRACT AS RECORDED IN VOLUME 1669, PAGE 157 OFFICIAL RECORDS, IN THE CITY OF PORT ISABEL, CAMERON COUNTY, TEXAS

PREPARED FOR:

FREESE AND NICHOLS

EXHIBIT ID 7

FIRM NO. 10084100

VASQUEZ SURVEYING INC.

4000 BOCA CHICA BLVD.
BROWNSVILLE, TEXAS 78521
Phone: (956) 541-9826
Cell: (956) 466-9680
Fax: (956) 544-4177

G.F. NO. N/A

JOB NO. 19 4897 21 5143

T.G. 03-2021

FILED FOR RECORD
AT 3:30 O'CLOCK P M

MAY 10 2021

SYLVIA GARZA-PEREZ
CAMERON COUNTY CLERK
DOC No 2021-20409
By _____ Deputy

VG-1145-2021-20575

Cameron County
Sylvia Garza-Perez
Cameron County Clerk

Instrument Number: 2021-20575

Real Property Recordings

Recorded On: May 11, 2021 11:57 AM

Number of Pages: 9

" Examined and Charged as Follows: "

Total Recording: $64.00

********** THIS PAGE IS PART OF THE INSTRUMENT **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	20575
Receipt Number:	20210511000128
Recorded Date/Time:	May 11, 2021 11:57 AM
User:	Claudia R
Station:	cclerk18_10

Record and Return To:

LAGUNA MADRE WATER DISTRICT
SUPLY. DIST #1

PORT ISABEL TX 78578

STATE OF TEXAS
Cameron County
I hereby certify that this Instrument was filed in the File Number sequence on the date/time printed hereon, and was duly recorded in the Official Records of Cameron County, Texas

Sylvia Garza-Perez
Cameron County Clerk
Cameron County, TX

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

LAGUNA MADRE WATER DISTRICT UTILITY AND ACCESS EASEMENT

STATE OF TEXAS §
§ **KNOW ALL MEN BY THESE PRESENTS**
COUNTY OF CAMERON §

Date: May 3, 2021

Grantor: SUSAN LEE COOK

Grantor's Mailing Address: 609 Beach Blvd
Laguna Vista, Cameron County, Texas 78578-2625

Grantee: LAGUNA MADRE WATER DISTRICT, a duly organized and operating municipal utility district, and conservation and reclamation district, and its assigns, for the use and benefit of all entities, public or private, providing public water and sewer services

Grantee's Mailing Address: 105 Port Road
Port Isabel, Texas 78578

Easement Property: Being a 0.184 acre (8,017.50 sq. ft.) utility easement out of Lot 1, Shell Harbor Subdivision, in the City of Port Isabel, Cameron County, Texas, according to the map or plat thereof recorded in Cabinet 1, Page 553-B, Map Records of Cameron County, Texas; said 0.184 acre tract of land being described by metes and bounds and shown in **Exhibits "A"** and **"B"** attached hereto and incorporated herein (the "Easement"), together with the right to use as much of the surface of the property in the Easement as may be reasonably necessary for the installation, construction, maintenance and removal of the Facilities, as that term is defined below.

Easement Purpose: For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of public sanitary sewer and wastewater collection system, water system, and related improvements and facilities, including water and sewer distribution pipelines (including but not limited to pipelines installed and maintained on adjacent property for the purpose of connecting buildings and improvements to a wastewater collection system), meters, valves and any other appurtenances as needed (collectively, the "Facilities").

Consideration: The sum of ten dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor.

Reservations from Conveyance: None

Exceptions to Warranty: This conveyance is made by Grantor and accepted by Grantee subject to any and all existing easements, covenants, rights-of-way, conditions, restrictions, outstanding mineral interests, royalty interests, if any, relating to the Easement Property, to the extent, and only to the extent, that the same may be in force and effect, and either shown of record in the Office of the County Clerk of Cameron County, Texas or that may be apparent on the Easement Property.

Grant of Utility Easement: Subject to the terms and provisions hereof, Grantor, for the Consideration, grants, sells and conveys to Grantee and Grantee's successors and assigns an easement (the "Easement"), over, on, under, and across the Easement Property for the Easement Purpose, together with (i) the right of ingress and egress at all times over, on, and across the Easement Property for use of the Easement Property for the Easement Purpose, (ii) the right to eliminate any encroachments in the Easement Property that interfere in any way or are inconsistent with the rights granted to Grantee under this instrument for the Easement Purpose as determined by Grantee in its reasonable discretion, and (iii) all and singular rights and appurtenances thereto in any way belonging, to have and to hold the Easement to Grantee and Grantee's successors and assigns forever. There are no liens, attachments, or other encumbrances which will affect the title or right of the Grantor to convey this Easement to the Grantee for the Easement Purpose. If such condition does exist, a signature with acknowledgement shall be included and made a part of this document conveying the rights and privileges contained herein, and subordinating any such lien or encumbrance to the easement granted herein. Grantor binds itself and Grantor's successors and assigns to warrant and forever defend the Easement and rights granted herein unto Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or attempting to claim the Easement or any part of the Easement.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement*. The Easement is nonexclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's successors and assigns. The rights granted to Grantee in this Easement are assignable in whole or in part.

2. *Duration of Easement*. The Easement shall commence on the effective date of this Agreement and shall run with the land and continue in full force and effect perpetually.

3. *Reservation of Rights*. Grantee's right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor's successors and assigns the right to use all or part of the Easement Property in conjunction with Grantee as long as such use by Grantor and Grantor's successors and assigns does not, in the sole judgment of Grantee, interfere with the use of the Easement Property by Grantee for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property in conjunction with Grantee, as long as such further conveyance is subject to the terms of this Agreement. Notwithstanding the foregoing, Grantor shall not place or construct any permanent improvements of any kind within the Easement Property.

4. *Improvement and Maintenance of Easement Property.* Grantor shall not make changes in the grade, elevation and contour of the land within the Easement without the prior written consent of Grantee. Grantor shall not directly or indirectly interfere with Grantee's efficient, safe or convenient use of the Easement. Grantee has the right to eliminate any encroachments into the Easement Property and to prevent the construction or placement within the Easement of any permanent building, structures, materials or other obstructions which may, in the sole judgment of the Grantee, interfere with the Grantee's use of the Easement or impede the safe use of Grantee's equipment in the Easement. If such obstruction(s) are constructed or otherwise placed within the Easement, without Grantee's prior written consent, the Grantee shall have the right to remove same from such space and seek payment from the Grantor for the reasonable cost of such removal. Grantee has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Grantee's sole discretion, subject to performance of Grantee's obligations under this agreement. Grantee shall maintain the Easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantor's premises. It is understood and agreed that the Consideration herein paid includes payment for all damages for the initial construction and ordinary operation and maintenance of the Facilities on the Easement Property for the Easement Purpose. Grantee shall not be liable for damages caused by keeping the Easement Property clear of any encroachments or obstructions. All parts of the Facilities installed on the Easement Property shall remain the exclusive property of Grantee. Improvement and maintenance of the Easement Property will be at the sole expense of the Grantee. For any improvement or maintenance, and for any purposes under this agreement, Grantee must promptly restore the surface of the Easement Property to an equal or better condition as provided upon completion of initial construction.

5. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective successors and permitted assigns.

7. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

8. *Entire Agreement.* This grant of Utility and Access Easement constitutes the entire agreement between Grantor and Grantee relating to the Easement described herein, and any prior agreement, promises, negotiations, or representations not expressly set forth in this agreement are of no force and effect. Any amendment to this agreement shall be of no force and effect unless it is in writing and signed by Grantor and Grantee.

9. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

10. *No Partnership.* The parties hereto expressly acknowledge and agree that Grantor and Grantee have not formed, and are not hereby forming, with Grantee or any other party, a partnership, joint venture or any other

similar entity, and this agreement is not intended, and shall not be construed, to create any such entity or relationship.

11. *Waiver of Default*. It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

12. *Further Assurances*. Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

13. *Legal Construction*. If any provision in this agreement is for any reason unenforceable, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. This agreement will not be construed more or less favorably between parties by reason of authorship or origin of language.

14. *Notices*. Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United State Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

15. *Recitals*. Any recitals in this agreement are represented by the parties to be accurate and constitute a part of the substantive agreement.

IN WITNESS WHEREOF, this Grant of a Utility and Access Easement has been executed as of this 6th day of May, 2021.

[The remainder of this page is left blank intentionally.]

GRANTOR:

SUSAN LEE COOK

By: Susan Lee Cook

Attest: N/A

Printed Name: Susan Lee Cook

Title: N/A

STATE OF TEXAS §
§
COUNTY OF CAMERON §

This instrument was acknowledged before me on the 5th day of May, 2021, by Susan Lee Cook

DAISY PATRICIA MARTINEZ
Notary Public, State of Texas
Comm. Expires 03-08-2023
Notary ID 128545056

Daisy Patricia Martinez
Notary Public, State of Texas

GRANTEE:

LAGUNA MADRE WATER DISTRICT

By:

Printed Name: Scott D. Friedman

Title: Chairman

STATE OF TEXAS §
§
COUNTY OF CAMERON §

This instrument was acknowledged before me on the 10th day of May, 2021, by Scott D. Friedman.

Daisy Patricia Martinez
Notary Public, State of Texas

Charge and Return to:
Laguna Madre Water District
105 Port Road
Port Isabel, Texas 78578

DAISY PATRICIA MARTINEZ
Notary Public, State of Texas
Comm. Expires 03-08-2023
Notary ID 128545056

EXHIBIT "A"

VASQUEZ SURVEYING INC.
4000 Boca Chica Boulevard
Brownsville, Texas 78521
(956) 541-9826 Fax (956) 544-4177

April 23, 2021
Job # 21 5474

Metes and Bounds Description of a 0.184 Acre Tract;
20 ft. Wide Utility Easement

BEING, 0.184 ACRE TRACT (8,017.50 SQ. FT.) OF LAND MORE OR LESS, OUT OF LOT 1, SHELL HARBOR SUBDIVISION, IN THE CITY OF PORT ISABEL, CAMERON COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN CABINET 1, PAGE 553-B MAP RECORDS OF CAMERON COUNTY, TEXAS.; SAID 0. 184 ACRE TRACT OF LAND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

BEGINNING, AT THE SOUTHWEST CORNER OF SAID LOT 1, SHELL HARBOR SUBDIVISION, SAME BEING A POINT ON THE NORTH RIGHT OF WAY LINE OF STATE HIGHWAY NO. 100 (RIGHT OF WAY VARIES) FOR THE SOUTHWEST CORNER OF THIS TRACT;

THENCE, CONTIGUOUS WITH THE WEST BOUNDARY LINE OF SAID LOT 1 AND LEAVING THE NORTH RIGHT OF WAY LINE OF SAID STATE HIGHWAY NO. 100, NORTH, A DISTANCE OF 20.16 FEET TO A ½" IRON ROD WITH A YELLOW PLASTIC ID CAP STAMPED "VASQUEZ SURV 5739" SET, FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE, LEAVING THE WEST BOUNDARY LINE OF SAID LOT 1, SOUTH 82 DEG., 46 MIN., 40 SEC., EAST, A DISTANCE OF 185.24 FEET TO A NAIL SET FOR AN INTERIOR CORNER OF THIS TRACT;

THENCE, SOUTH 85 DEG., 26 MIN., 30 SEC., EAST, A DISTANCE OF 215.64 FEET TO A ½" IRON ROD WITH A YELLOW PLASTIC ID CAP STAMPED "VASQUEZ SURV 5739" SET ON THE WEST BOUNDARY LINE OF SAID SHELL HARBOR SUBDIVISION, SAME BEING THE EAST BOUNDARY LINE OF LOT 1, McKEOWN SUBDIVISION (VOL. 31, PG. 29 M.R.C.C.) FOR THE NORTHEAST CORNER OF THIS TRACT;

THENCE, CONTIGUOUS WITH THE EAST BOUNDARY LINE OF SAID SHELL HARBOR SUB. SAME BEING THE WEST BOUNDARY LINE OF SAID McKEOWN SUBDIVISION (VOL. 31, PG. 29, MAP RECORDS CAMERON COUNTY), SOUTH, A DISTANCE OF 20.06 FEET TO A THE NORTH RIGHT OF WAY LINE OF SAID STATE HIGHWAY 100, SAME BEING THE SOUTHEAST CORNER OF SAID LOT 1, SHELL HARBOR SUBDIVISION, FOR THE SOUTHEAST CORNER OF THIS TRACT;

THENCE, LEAVING THE EAST BOUNDARY LINE OF SAID SHELL HARBOR SUBDIVISION AND CONTIGUOUS WITH THE NORTH RIGHT OF WAY LINE OF STATE HIGHWAY NO. 100 NORTH 85 DEG., 26 MIN., 30 SEC., WEST A DISTANCE OF 217.70 FEET TO A NAIL SET, FOR AN EXTERIOR CORNER OF THIS TRACT;

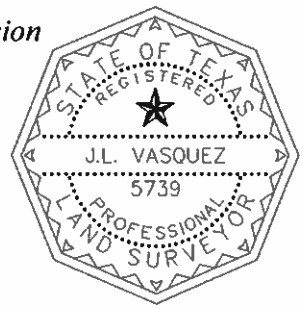
THENCE, CONTIGUOUS WITH THE NORTH RIGHT OF WAY LINE OF SAID STATE HIGHWAY NO. 100 AND THE SOUTH BOUNDARY LINE OF SAID LOT 1, NORTH 82 DEG., 46 MIN., 40 SEC., WEST, A DISTANCE OF 183.17 FEET TO THE **POINT OF BEGINNING**:

CONTAINING, 0.184 ACRES (8,017.50 SQ.FT.) OF LAND, MORE OF LESS.

SUBJECT TO ANY AND ALL EASEMENTS, RESTRICTIONS, DEDICATIONS AND/OR EXCEPTIONS THAT MIGHT BE OF RECORDS.

Meridian of Shell Harbor Subdivision

J.L. Vasquez
Registered Professional Land
Surveyor No. 5739



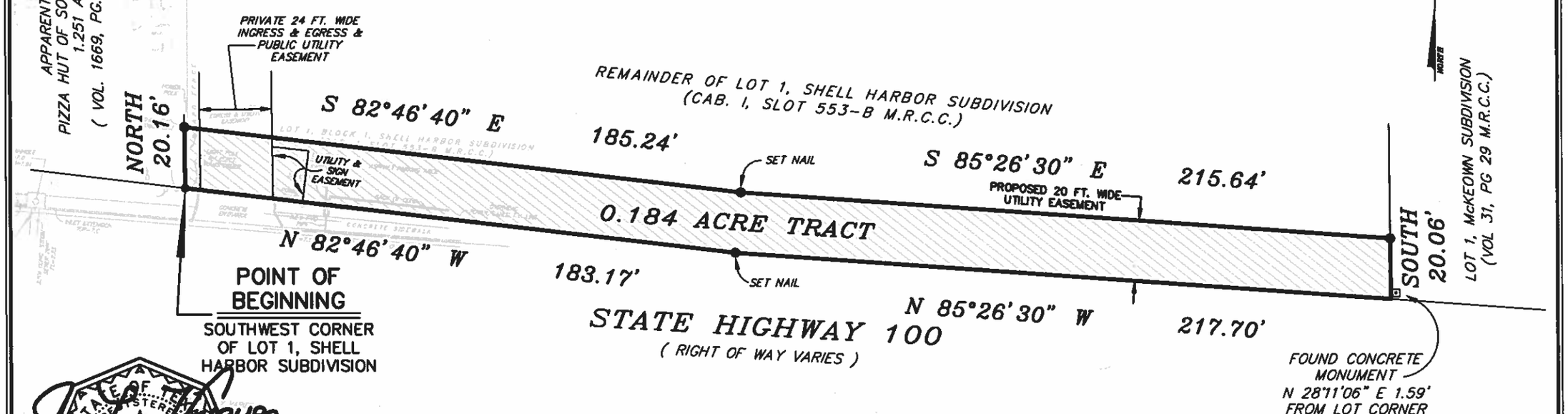
MERIDIAN OF SHELL HARBOR SUBDIVISION

EXHIBIT "B"

SCALE: 1"=40'

LEGEND

"●" SET 1/2" IRON ROD WITH A YELLOW PLASTIC ID CAP STAMPED "VASQUEZ SURV 5739" (UNLESS OTHERWISE NOTED)



STATE OF TEXAS
REGISTERED
J.L. VASQUEZ
5739
PROFESSIONAL
LAND SURVEYOR

Date: 04-21-2021

MAP SHOWING A PROPOSED 20 FT. WIDE UTILITY EASEMENT

BEING 0.184 ACRE TRACT (8,017.50 SQ. FT.) OF LAND MORE OR LESS OUT OF LOT 1, SHELL HARBOR SUBDIVISION, IN THE CITY OF PORT ISABEL, CAMERON COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN CABINET 1, PAGE 553-B MAP RECORDS OF CAMERON COUNTY, TEXAS.

PREPARED FOR:

FREESE AND NICHOLS

EXHIBIT ID SHELL HARBOR SUB. 3RD OPTION 04-21-21

ALL DIMENSIONS ARE IN DECIMAL OF A FOOT UNLESS OTHERWISE NOTED.

FIRM NO. 10084100

VASQUEZ SURVEYING INC.

4000 BOCA CHICA BLVD.
BROWNSVILLE, TEXAS 78521
Phone: (956) 541-9826
Cell: (956) 466-9680
Fax: (956) 544-4177

G.F. NO. N/A

JOB NO. 21 5474

T.G. 04-2021

FILED FOR RECORD
AT 11:57 O'CLOCK A M

MAY 11 2021

SYLVIA GARZA-PEREZ
CAMERON COUNTY CLERK
DOC NO 2021-20575
By _____ Deputy

VG-1145-2021-10720

Cameron County
Sylvia Garza-Perez
Cameron County Clerk

Instrument Number: 2021-10720

Real Property Recordings

Recorded On: March 16, 2021 12:08 PM

Number of Pages: 8

" Examined and Charged as Follows: "

Total Recording: $60.00

********** THIS PAGE IS PART OF THE INSTRUMENT **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	10720
Receipt Number:	20210316000192
Recorded Date/Time:	March 16, 2021 12:08 PM
User:	Maria M
Station:	cclerk18_10

Record and Return To:

LAGUNA MADRE WATER DISTRICT
SUPLY. DIST #1

PORT ISABEL TX 78578

STATE OF TEXAS
Cameron County
I hereby certify that this Instrument was filed in the File Number sequence on the date/time printed hereon, and was duly recorded in the Official Records of Cameron County, Texas

Sylvia Garza-Perez
Cameron County Clerk
Cameron County, TX

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

LAGUNA MADRE WATER DISTRICT UTILITY AND ACCESS EASEMENT

STATE OF TEXAS §
§ **KNOW ALL MEN BY THESE PRESENTS**
COUNTY OF CAMERON §

Date: February 5, 2021

Grantor: SOUTH TEXAS DISTRICT COUNCIL OF ASSEMBLIES OF GOD, INC. for: Lighthouse Assembly of God

Grantor's Mailing Address: P. O. Box 1408
Port Isabel, TX 78578

Grantee: LAGUNA MADRE WATER DISTRICT, a duly organized and operating municipal utility district, and conservation and reclamation district, and its assigns, for the use and benefit of all entities, public or private, providing public water and sewer services

Grantee's Mailing Address: 105 Port Road
Port Isabel, Texas 78578

Easement Property: Being a fifteen feet (15') wide (2250 sq. ft.) utility easement out of a 0.902 acre tract of land as recorded in Volume 4594, Page 157, Official Records, Cameron County, Texas, and more particularly described and shown in **Exhibits "A"** and **"B"** attached hereto and incorporated herein (the "Easement"), together with the right to use as much of the surface of the property in the Easement as may be reasonably necessary for the installation, construction, maintenance and removal of the Facilities, as that term is defined below.

Easement Purpose: For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of public sanitary sewer and wastewater collection system, water system, and related improvements and facilities, including water and sewer distribution pipelines (including but not limited to pipelines installed and maintained on adjacent property for the purpose of connecting buildings and improvements to a wastewater collection system), meters, valves and any other appurtenances as needed (collectively, the "Facilities").

Consideration: The sum of ten dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor.

Reservations from Conveyance:	None
Exceptions to Warranty:	This conveyance is made by Grantor and accepted by Grantee subject to any and all existing easements, covenants, rights-of-way, conditions, restrictions, outstanding mineral interests, royalty interests, if any, relating to the Easement Property, to the extent, and only to the extent, that the same may be in force and effect, and either shown of record in the Office of the County Clerk of Cameron County, Texas or that may be apparent on the Easement Property.
Grant of Utility Easement:	Subject to the terms and provisions hereof, Grantor, for the Consideration, grants, sells and conveys to Grantee and Grantee's successors and assigns an easement (the "Easement"), over, on, under, and across the Easement Property for the Easement Purpose, together with (i) the right of ingress and egress at all times over, on, and across the Easement Property for use of the Easement Property for the Easement Purpose, (ii) the right to eliminate any encroachments in the Easement Property that interfere in any way or are inconsistent with the rights granted to Grantee under this instrument for the Easement Purpose as determined by Grantee in its reasonable discretion, and (iii) all and singular rights and appurtenances thereto in any way belonging, to have and to hold the Easement to Grantee and Grantee's successors and assigns forever. There are no liens, attachments, or other encumbrances which will affect the title or right of the Grantor to convey this Easement to the Grantee for the Easement Purpose. If such condition does exist, a signature with acknowledgement shall be included and made a part of this document conveying the rights and privileges contained herein, and subordinating any such lien or encumbrance to the easement granted herein. Grantor binds itself and Grantor's successors and assigns to warrant and forever defend the Easement and rights granted herein unto Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or attempting to claim the Easement or any part of the Easement.
Terms and Conditions:	The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement*. The Easement is nonexclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's successors and assigns. The rights granted to Grantee in this Easement are assignable in whole or in part.

2. *Duration of Easement*. The Easement shall commence on the effective date of this Agreement and shall run with the land and continue in full force and effect perpetually.

3. *Reservation of Rights*. Grantee's right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor's successors and assigns the right to use all or part of the Easement Property in conjunction with Grantee as long as such use by Grantor and Grantor's successors and assigns does not, in the sole judgment of Grantee, interfere with the use of the Easement Property by Grantee for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property in conjunction with Grantee, as long as such further conveyance is subject to the terms of this Agreement. Notwithstanding the foregoing, Grantor shall not place or construct any permanent improvements of any kind within the Easement Property.

4. *Improvement and Maintenance of Easement Property*. Grantor shall not make changes in the grade, elevation and contour of the land within the Easement without the prior written consent of Grantee. Grantor shall not directly or indirectly interfere with Grantee's efficient, safe or convenient use of the Easement. Grantee has the right to eliminate any encroachments into the Easement Property and to prevent the construction or placement within the Easement of any permanent building, structures, materials or other obstructions which may, in the sole judgment of the Grantee, interfere with the Grantee's use of the Easement or impede the safe use of Grantee's equipment in the Easement. If such obstruction(s) are constructed or otherwise placed within the Easement, without Grantee's prior written consent, the Grantee shall have the right to remove same from such space and seek payment from the Grantor for the reasonable cost of such removal. Grantee has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Grantee's sole discretion, subject to performance of Grantee's obligations under this agreement. Grantee shall maintain the Easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantor's premises. It is understood and agreed that the Consideration herein paid includes payment for all damages for the initial construction and ordinary operation and maintenance of the Facilities on the Easement Property for the Easement Purpose. Grantee shall not be liable for damages caused by keeping the Easement Property clear of any encroachments or obstructions. All parts of the Facilities installed on the Easement Property shall remain the exclusive property of Grantee. Improvement and maintenance of the Easement Property will be at the sole expense of the Grantee. For any improvement or maintenance, and for any purposes under this agreement, Grantee must promptly restore the surface of the Easement Property to an equal or better condition as provided upon completion of initial construction.

5. *Equitable Rights of Enforcement*. This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. *Binding Effect*. This agreement binds and inures to the benefit of the parties and their respective successors and permitted assigns.

7. *Choice of Law*. This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

8. *Entire Agreement*. This grant of Utility and Access Easement constitutes the entire agreement between Grantor and Grantee relating to the Easement described herein, and any prior agreement, promises, negotiations, or representations not expressly set forth in this agreement are of no force and effect. Any amendment to this agreement shall be of no force and effect unless it is in writing and signed by Grantor and Grantee.

9. *Counterparts*. This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

10. *No Partnership*. The parties hereto expressly acknowledge and agree that Grantor and Grantee have not formed, and are not hereby forming, with Grantee or any other party, a partnership, joint venture or any other

similar entity, and this agreement is not intended, and shall not be construed, to create any such entity or relationship.

11. *Waiver of Default*. It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

12. *Further Assurances*. Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

13. *Legal Construction*. If any provision in this agreement is for any reason unenforceable, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. This agreement will not be construed more or less favorably between parties by reason of authorship or origin of language.

14. *Notices*. Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United State Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

15. *Recitals*. Any recitals in this agreement are represented by the parties to be accurate and constitute a part of the substantive agreement.

IN WITNESS WHEREOF, this Grant of a Utility and Access Easement has been executed as of this 16th day of MARCH, 2021.

[The remainder of this page is left blank intentionally.]

GRANTOR:

SOUTH TEXAS DISTRICT COUNCIL OF ASSEMBLIES OF GOD, INC.
for: Lighthouse Assembly of God

By: Rev. Steven Hyde

Printed Name: Rev. Steven Hyde

Title: Pastor

STATE OF TEXAS §
§
COUNTY OF CAMERON §

This instrument was acknowledged before me on the 16th day of March, 2021, by

DAISY PATRICIA MARTINEZ

Daisy Patricia Martinez
Notary Public, State of Texas

DAISY PATRICIA MARTINEZ
Notary Public, State of Texas
Comm. Expires 03-08-2023
Notary ID 128545056

GRANTEE:

LAGUNA MADRE WATER DISTRICT

By:

Printed Name: Scott Friedman

Title: Chairman

STATE OF TEXAS §
§
COUNTY OF CAMERON §

This instrument was acknowledged before me on the 24th day of February, 2021, by

DAISY PATRICIA MARTINEZ

Daisy Patricia Martinez
Notary Public, State of Texas

DAISY PATRICIA MARTINEZ
Notary Public, State of Texas
Comm. Expires 03-08-2023
Notary ID 128545056

Charge and Return to:
Laguna Madre Water District
105 Port Road
Port Isabel, Texas 78578

EXHIBIT "A"

VASQUEZ SURVEYING INC.
4000 Boca Chica Boulevard
Brownsville, Texas 78521
(956) 541-9826 Fax (956) 544-4177

November 2, 2020
Job # 19 4897 and 20 5143

Metes and Bounds Description of a 0.052 Acre Tract; 15 ft. Wide Utility Easement

BEING 0.052 ACRE TRACT (2,250 SQ. FT.) MORE OR LESS OUT OF A 0.902 ACRE TRACT AS RECORDED IN VOLUME 4594 PAGE 157 OFFICIAL RECORDS CAMERON COUNTY, TEXAS, IN THE CITY OF PORT ISABEL, CAMERON COUNTY, TEXAS; SAID 0.052 ACRE TRACT OF LAND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

COMMENCING, AT THE NORTHWEST CORNER OF SAID 0.902 ACRE TRACT, **THENCE,** CONTIGUOUS WITH THE WEST BOUNDARY LINE OF SAID 0.92 ACRE TRACT, SOUTH 09 DEG. 02 MIN., 00 SEC., WEST A DISTANCE OF 44.66 FEET TO A POINT FOR THE NORTHWEST CORNER AND **POINT OF BEGINNING** OF THIS TRACT;

THENCE, LEAVING THE WEST BOUNDARY LINE OF SAID 0.902 ACRE TRACT, SOUTH 80 DEG., 13 MIN., 21 SEC. EAST, A DISTANCE OF 150.01 FEET TO A POINT ON THE EAST BOUNDARY LINE OF SAID 0.902 ACRE TRACT, FOR THE NORTHEAST CORNER OF THIS TRACT;

THENCE, CONTIGUOUS WITH THE EAST BOUNDARY LINE OF SAID 0.902 ACRE TRACT, SOUTH 09 DEG., 02 MIN., 00 SEC., WEST, A DISTANCE OF 15.0 FEET TO A POINT FOR THE SOUTHEAST CORNER OF THIS TRACT;

THENCE, LEAVING THE EAST BOUNDARY LINE OF SAID 0.902 ACRE TRACT, NORTH 80 DEG., 13 MIN., 21 SEC. WEST, A DISTANCE OF 150.01 FEET TO A POINT ON THE WEST BOUNDARY LINE OF SAID 0.902 ACRE TRACT, FOR THE SOUTHWEST CORNER OF THIS TRACT;

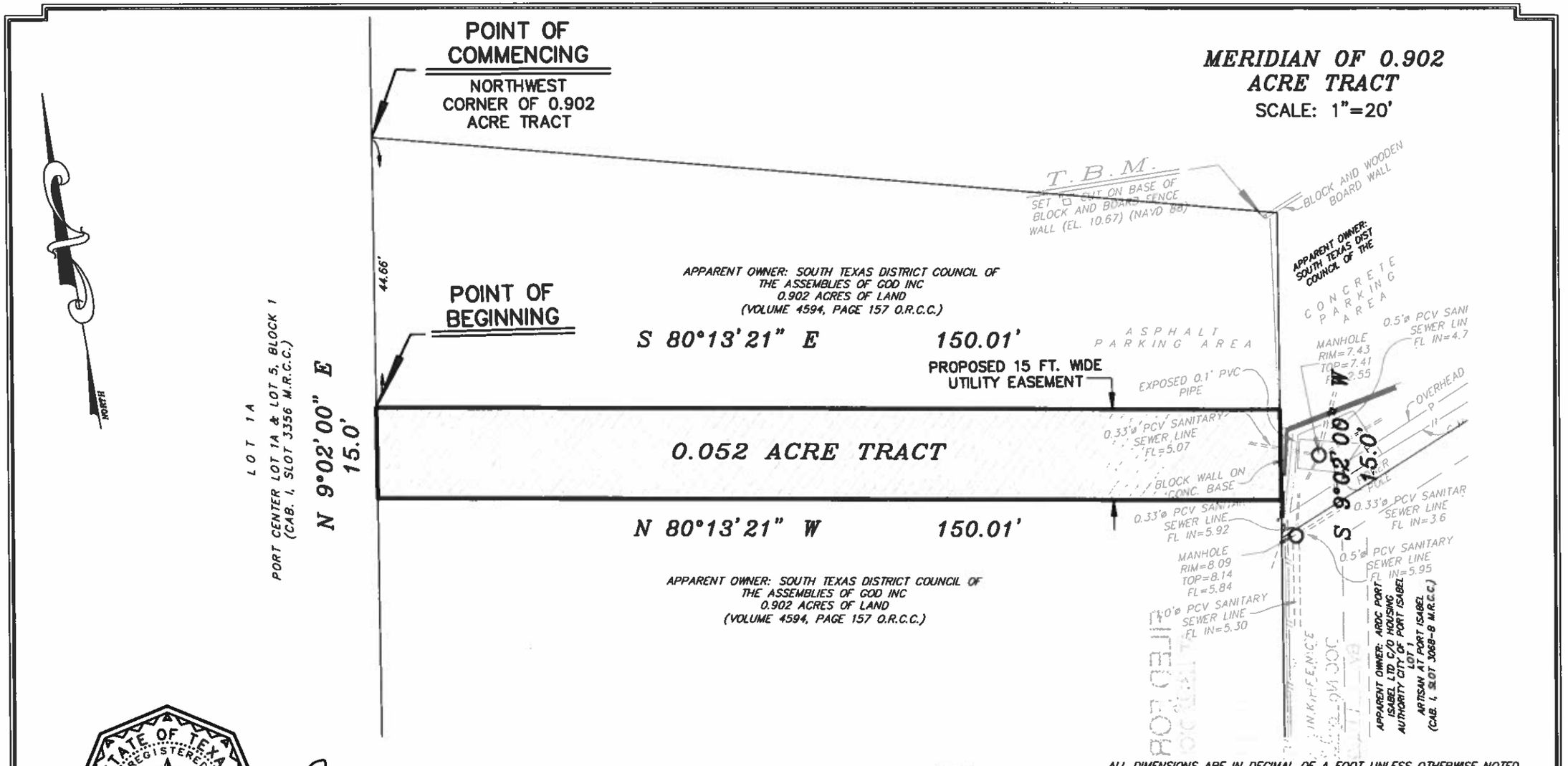
THENCE, CONTIGUOUS WITH THE WEST BOUNDARY LINE OF SAID 0.902 ACRE TRACT, NORTH 09 DEG., 02 MIN., 00 SEC., EAST, A DISTANCE OF 15.0 FEET TO THE **POINT OF BEGINNING:**

CONTAINING, 0.052 ACRES OF LAND, MORE OF LESS.

SUBJECT TO ANY AND ALL EASEMENTS, RESTRICTIONS, DEDICATIONS AND/OR EXCEPTIONS THAT MIGHT BE OF RECORDS.

Meridian of 0.902 Acre Tract

J.L. Vasquez
Registered Professional Land
Surveyor No. 5739



ALL DIMENSIONS ARE IN DECIMAL OF A FOOT UNLESS OTHERWISE NOTED.

STATE OF TEXAS
REGISTERED
J.L. VASQUEZ
5739
PROFESSIONAL
LAND SURVEYOR

Date: 11-24-2020

MAP SHOWING A PROPOSED 15 FT. WIDE UTILITY EASEMENT

BEING 0.052 ACRE TRACT (2,250 SQ. FT.) MORE OR LESS OUT OF A 0.902 ACRE TRACT AS RECORDED IN VOLUME 4594 PAGE 157 OFFICIAL RECORDS CAMERON COUNTY, TEXAS, IN THE CITY OF PORT ISABEL, CAMERON COUNTY, TEXAS.

PREPARED FOR:

FREESE AND NICHOLS

FIRM NO. 10084100

VASQUEZ SURVEYING INC.

4000 BOCA CHICA BLVD.
BROWNSVILLE, TEXAS 78521
Phone: (956) 541-9826
Cell: (956) 466-9680
Fax: (956) 544-4177

G.F. NO. N/A

JOB NO. 21 5180

T.C. 05-2020

FILED FOR RECORD
AT 12:09 O'CLOCK P M

MAR 16 2021

SYLVIA GARZA-PEREZ
CAMERON COUNTY CLERK
DOC No 2021-10720
By C Mesa Deputy

SRF-404
4/16/2015

Debarment / Suspension Certification

I, _____, hereby certify that I have checked on the federal
(Authorized Representative of Recipient)
System for Award Management (www.sam.gov) website and determined that
_____ is not shown as an "excluded party" that is debarred,
(Name of entity)
suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. (See 2 CFR Part 180 and 2 CFR Part 1532 for additional information on the federal governmentwide debarment and suspension system for nonprocurement programs and activities.)

I understand that a false statement herein may subject me to penalties under federal and state laws relating to filing false statements and other relevant statutes.

_____ _____
Signature Date

_____
Title

_____
Name of Recipient

Verifying prime contractors and subcontractors for construction, equipment, supplies and services: Using the www.sam.gov website, the recipient must verify prior to awarding the contract that the prime contractor is not listed as an "excluded party" that is debarred, suspended or otherwise excluded from or ineligible. Once any subcontractors are known, they also must be verified as not listed as an "excluded party" prior to award of a subcontract. The recipient must print a dated record of the verification from the www.sam.gov website and retain a copy that is available for review by TWDB. The prime contractors and subcontractors must be verified prior to the contract award or the costs may be disallowed.

DIVISION 01

GENERAL REQUIREMENTS

01 11 00 SUMMARY OF WORK

PART 1 - GENERAL

1.01 SUMMARY

Construct Work as described in the Contract Documents.

A. Provide the materials, equipment, and incidentals required to make the Project completely and fully operable.

B. Provide the labor, equipment, tools, and consumable supplies required for a complete Project.

C. Provide the civil, architectural, structural, mechanical, electrical, instrumentation, and all other Work required for a complete and operable Project.

D. Test and place the completed Project in operation.

E. Provide the special tools, spare parts, lubricants, supplies, or other materials as indicated in the Contract Documents for the operation and maintenance of the Project.

F. The Contract Documents do not indicate or describe all Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Construction Manager.

1.02 DESCRIPTION OF WORK

Work is described in general, non-inclusive terms as:

A. Rehabilitation of one (1) wastewater lift station (15) including piping modifications, pump replacement, electrical and site civil work.

B. Replacement of three (3) wastewater lift stations (4, 17, 35) including wet well, pumps, piping and appurtenances, electrical and site civil work.

C. Installation of approximately 1,840 linear feet of 16” force main at Lift Station No. 11.

D. Installation of approximately 1,020 linear feet of 6” force main at Lift Station No. 17.

E. Installation of approximately 480 linear feet of 6” force main at Lift Station No. 25.

F. Installation of approximately 1,325 linear feet of 8” gravity main along SH-100.

G. Installation of approximately 1,100 linear feet of 18” gravity main to decommission Lift Station No. 30.

H. Replacement of approximately 90 linear feet of 18” PVC gravity main on Hickman Boulevard.

See Section 01 23 10 for Alternates and Allowances.

1.03 WORK UNDER OTHER CONTRACTS

The Owner has no knowledge of work, other than the Work included in this Contract, which may impact construction scheduling, testing, and startup.

1.04 WORK BY OWNER

A. The following items of work are not included in this Contract, but may impact construction scheduling, testing, and startup:

Owner	Description
Laguna Madre Water District	Replacement and reroute of the 4" force main serving Lift Station No. 10 (see Section 01 35 00 for sequencing requirements)

B. Bring any discrepancies in the list to the attention of the Construction Manager. It will be deemed that the Contractor included the more expensive listing in the Contract Price if the Contractor fails to bring any discrepancies to the attention of the Construction Manager prior to executing the Agreement.

C. Owner will provide normal operation and maintenance of the existing facilities during construction, unless otherwise stated.

1.05 CONSTRUCTION OF UTILITIES

A. Existing utilities will be used for this Project. Coordinate with others performing Work associated with this Project.

B. Power and Electrical Services:

1. Provide permanent power connections for the Site through the power utility unless indicated otherwise in the Contract Documents.
2. Pay for permits and for providing permanent power.
3. Coordinate and cooperate with others performing this Work.
4. Power utility will provide the construction to the point shown on the Drawings.
5. Provide conduit, conductors, pull boxes, manholes, and other appurtenances for the installation of power cable between the property line and the transformer and between the transformer and the main power switch unless the Contract Documents indicate otherwise.
6. Test conductors in accordance with the Specifications and requirements of the power utility and coordinate with the power utility to energize the system when ready.
7. Pay for temporary power including construction cost, meter connection, fees, and permits.
8. Contractor may use the permanent power source in lieu of temporary power source when permanent power is available at the Site.
    a. Notify Construction Manager and Owner of intent to use the permanent power source.
    b. Arrange with the power utility and pay the charges for connections and monthly charges for use of this power.
9. Pay for the power consumed until the Project has been accepted as Substantially Complete unless noted otherwise.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 23 10 ALTERNATES AND ALLOWANCES

PART 1 - GENERAL

1.01 SUMMARY

A. Alternates:

1. This Section describes each alternate by number and describes the basic changes to be incorporated into the Work when this alternate is made a part of the Work in the Agreement.
2. The Drawings and Specifications will outline the extent of Work to be included in the alternate Contract Price.
3. Coordinate related Work and modify surrounding Work as required to properly integrate the Work under each alternate, and provide a complete and functional Project as required by the Contract Documents.
4. Alternate Bids or Proposals may be accepted or rejected at the option of the Owner.
5. Owner may incorporate these alternates in the Contract when executed, or may issue a Change Order to incorporate these alternates within 120 days of the opening of Contractor's Bid or Proposal at the prices offered in the Contractor's Bid or Proposal, unless noted otherwise. A Request for a Change Proposal may be issued after 120 days or other designated time period to negotiate a new price for incorporating the Work into the Project.

1.02 DOCUMENTATION

A. Provide documents for materials furnished as part of each alternate in accordance with Section 01 33 00 "Document Management."

1.03 DESCRIPTION OF ALTERNATES

A. Alternate No. 1 – Lift Station No. 35 Replacement

1. Add to replace one (1) wastewater lift station with a package wastewater lift station system including fiberglass wet well, suction piping and appurtenances, discharge piping and appurtenances, pumps and appurtenances, electrical work and site civil work to provide a complete and working system as indicated in the plans and as specified.

B. Alternate No. 2 – Lift Station No. 15 Rehabilitation

1. Add to rehabilitate (1) wastewater lift station pump replacement, suction piping and appurtenances replacement, discharge piping and appurtenances replacement, electrical work and site civil work to provide a complete and working system as indicated in the plans and as specified.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 26 00 CHANGE MANAGEMENT

PART 1 - GENERAL

1.01 REQUESTS FOR CHANGE PROPOSAL

Construction Manager will initiate Modifications by issuing a Request for Change Proposal (RCP).

A. Construction Manager and Design Professional will prepare a description of proposed Modifications.

B. Construction Manager will issue the Request for Change Proposal form to Contractor. A number will be assigned to the Request for a Change Proposal when issued.

C. Return a Change Proposal in accordance with Paragraph 1.02 for evaluation by the OPT.

1.02 CHANGE PROPOSALS

A. Submit a Change Proposal (CP) to the Construction Manager for Contractor initiated changes in the Contract Documents or in response to a Request for Change Proposal. Submit the Change Proposal and attach the forms provided by the Construction Manager.

1. Use the Change Proposal form provided by the Construction Manager.

2. Include with the Change Proposal:

a. A complete description of the proposed Modification if Contractor initiated or proposed changes to the OPT's description of the proposed Modification.

b. The reason the Modification is requested, if not in response to a Request for a Change Proposal.

c. A detailed breakdown of the cost of the change if the Modification requires a change in Contract Price. The itemized breakdown is to include:

1) List of materials and equipment to be installed;

2) Man hours for labor by classification;

3) Equipment used in construction;

4) Consumable supplies, fuels, and materials;

5) Royalties and patent fees;

6) Bonds and insurance;

7) Overhead and profit;

8) Field office costs;

9) Home office cost; and

10) Other items of cost.

d. Provide the level of detail outlined in the paragraph above for each Subcontractor or Supplier actually performing the Work if Work is to be provided by a Subcontractor or Supplier. Indicate appropriate Contractor mark ups for Work

provided through Subcontractors and Suppliers. Provide the level of detail outlined in the paragraph above for self-performed Work.

e. Submit Change Proposals that comply with the General Conditions for Cost of Work.

f. Provide a revised schedule. Show the effect of the change on the Project Schedule and the Contract Times.

B. Submit a Change Proposal to the Construction Manager to request a Field Order.

C. A Change Proposal is required for all substitutions or deviations from the Contract Documents.

D. Request changes to products in accordance with Section 01 33 02 “Shop Drawings.”

1.03 CONSTRUCTION MANAGER WILL EVALUATE THE REQUEST FOR A MODIFICATION

A. Construction Manager will issue a Modification per the General Conditions if the Change Proposal is acceptable to the Owner. Construction Manager will issue a Change Order or Contract Amendment for any changes in Contract Price or Contract Times.

1. Change Orders and Contract Amendments will be sent to the Contractor for execution with a copy to the Owner recommending approval. A Work Change Directive may be issued if Work needs to progress before the Change Order or Contract Amendment can be authorized by the Owner.

2. Work Change Directives, Change Orders, and Contract Amendments can only be approved by the Owner.

a. Work performed on the Change Proposal prior to receiving a Work Change Directive or approval of the Change Order or Contract Amendment is performed at the Contractor’s risk.

b. No payment will be made for Work on Change Orders or Contract Amendments until approved by the Owner.

B. Contractor may be informed that the Change Proposal is not approved and construction is to proceed in accordance with the Contract Documents.

1.04 EQUAL NON-SPECIFIED PRODUCTS

A. The products of the listed manufacturers are to be furnished where the Specifications list several manufacturers and do not specifically list “or equal” or “or approved equal” products. Use of any products other than those specifically listed is a substitution. Follow the procedures in Paragraph 1.05 for a substitution.

B. Contractor may submit other manufacturers’ products that are in full compliance with the Specifications where Specifications list one or more manufacturers followed by the phase “or equal” or “or approved equal.”

1. Submit a Shop Drawing as required by Section 01 33 02 “Shop Drawings” to document that the proposed product is equal or superior to the specified product.

2. Prove that the product is equal. It is not the OPT’s responsibility to prove the product is not equal.

a. Indicate on a point-by-point basis for each specified feature that the product is equal to the Contract Document requirements.

b. Make a direct comparison with the specified manufacturer's published data sheets and available information. Provide this printed material with the Shop Drawing.

c. The decision of the Design Professional regarding the acceptability of the proposed product is final.

3. Provide a certification that, in furnishing the proposed product as an equal, the Contractor:

a. Has thoroughly examined the proposed product and has determined that it is equal or superior in all respects to the product specified.

b. Has determined that the product will perform in the same manner and result in the same process as the specified product.

c. Will provide the same warranties and/or bonds as for the product specified.

d. Will assume all responsibility to coordinate any modifications that may be necessary to incorporate the product into the construction and will waive all claims for additional Work which may be necessary to incorporate the product into the Project which may subsequently become apparent.

e. Will maintain the same time schedule as for the specified product.

C. A Change Proposal is not required for any product that is in full compliance with the Contract Documents. If the product is not in full compliance, it may be offered as a Substitution.

1.05 SUBSTITUTIONS

A. Substitutions are defined as any product that the Contractor proposes to provide for the Project in lieu of the specified product. Submit a Change Proposal per Paragraph 1.02 along with documents required for a Shop Drawing as required by Section 01 33 02 "Shop Drawings" to request approval of a substitution.

B. Prove that the product is acceptable as a substitute. It is not the Design Professional's responsibility to prove the product is not acceptable as a substitute.

1. Indicate on a point-by-point basis for each specified feature that the product is acceptable to meet the intent of the Contract Documents requirements.

2. Make a direct comparison with the specified Suppliers published data sheets and available information. Provide this printed material with the Shop Drawing.

3. The decision of the Design Professional regarding the acceptability of the proposed substitute product is final.

C. Provide a certification that, in making the substitution request, the Contractor:

1. Has determined that the substituted product will perform in substantially the same manner and result in the same ability to meet the specified performance as the specified product;

2. Will provide the same warranties and/or bonds for the substituted product as specified or as would be provided by the manufacturer of the specified product;
3. Will assume all responsibility to coordinate any modifications that may be necessary to incorporate the substituted product into the Project and will waive all claims for additional Work which may be necessary to incorporate the substituted product into the Project which may subsequently become apparent; and
4. Will maintain the same time schedule as for the specified product.

D. Pay for review of substitutions in accordance with Section 01 33 02 “Shop Drawings.”

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 29 00 APPLICATION FOR PAYMENT PROCEDURES

PART 1 - GENERAL

1.01 SUMMARY

A. Submit Applications for Payment for completed Work and for materials and equipment in accordance with the General Conditions, the Supplementary Conditions, the Agreement, and this Section. The Contract Price is to include costs for:

1. Providing the Work in accordance with the Contract Documents;
2. Installing Owner furnished equipment and materials, if any;
3. Providing Work for alternates and allowances, if any;
4. Providing Work for extra work Items, if any and if authorized
5. Commissioning, startup, training, and initial maintenance and operation;
6. Acceptance testing at the manufacturer's facilities or at the Site;
7. All home office overhead costs and expenses, including profit made directly or indirectly from the Project;
8. Project management, contract administration, and field office and field operations staff including supervision, clerical support, and technology system support;
9. Professional services including design fees, legal fees, and other professional services;
10. Bonds and insurance;
11. Permits, licenses, patent fees, and royalties;
12. Taxes;
13. Providing all documentation and Samples required by the Contract Documents;
14. Facilities and equipment at the Site including:
    a. Field offices, office furnishings, and all related office supplies, software, and equipment,
    b. Storage facilities for Contractor's use and storage facilities for stored materials and equipment including spare parts storage,
    c. Shops, physical plant, construction equipment, small tools, vehicles, and technology and telecommunications equipment,
    d. Safety equipment and facilities to provide safe access and working conditions for workers and for others working at the Site,
    e. Temporary facilities for power and communications,
    f. Potable water and sanitation facilities, and
    g. Mobilization and demobilization for all these facilities and equipment.
15. Products, materials, and equipment stored at the Site or other suitable location in accordance with Section 01 31 00 "Project Management and Coordination";

16. Products, materials, and equipment permanently incorporated into the Project;
17. Temporary facilities for managing water including facilities for pumping, storage, and treatment as required for construction and protection of the environment;
18. Temporary facilities for managing environmental conditions and Constituents of Concern;
19. Temporary facilities such as sheeting, shoring, bracing, formwork, embankments, storage facilities, working areas, and other facilities required for construction of the Project;
20. Temporary and permanent facilities for protection of all overhead, surface, or underground structures or features;
21. Temporary and permanent facilities for removal, relocation, or replacement of any overhead, surface, or underground structures or features;
22. Products, materials, and equipment consumed during the construction of the Project;
23. Contractor labor and supervision to complete the Project including that provided through Subcontractors or Suppliers;
24. Correcting Defective Work during the Contract Times, during the Correction Period, or as required to meet any warranty provision of the Contract Documents;
25. Risk associated with weather and environmental conditions, startup, and initial operation of facilities including equipment, processes, and systems;
26. Contractor safety programs, including management, administration, and training;
27. Maintenance of facilities including equipment, processes, and systems until operation is transferred to Owner;
28. Warranties, extended or special warranties, or extended service agreements;
29. Cleanup and disposal of any and all surplus materials; and
30. Demobilization of all physical, temporary facilities not incorporated into the Project.

B. Include the cost not specifically set forth as an individual payment item but required to provide a complete and functional system in the Contract Price.

C. Provide written approval of the surety company providing performance and payment bonds for the Schedule of Values, Application for Payment form, and method of payment prior to submitting the first Application for Payment. Submit approval using the “Consent of Surety Company to Payment Procedures” form provided by the Construction Manager. Payment will not be made without this approval.

D. Construction Manager may withhold processing the Applications for Payment if any of the following processes or documentation is not up to date:
   1. Progress Schedule per Section 01 33 05 “Construction Progress Schedule.”
   2. Project videos and photographs per Section 01 33 06 “Graphic Documentation.”
   3. Record Documents per Section 01 31 13 “Project Coordination.”

4. Record Documents per Section 00 74 03 “American Iron and Steel (AIS) Guidance for Clean Water & Drinking Water State Revolving Fund Projects (TWDB-1106)

5. Record Documents per Section 00 74 04 “Disadvantage Business Enterprises for State Revolving Fund Projects (TWDB-0210).

6. Certified Payroll must be submitted weekly.

1.02 SCHEDULE OF VALUES

A. Divide the Contract Price into an adequate number of line items to allow more accurate determination of the earned value for each line item when evaluating progress payments. Submit a detailed Schedule of Values for the Project at least 10 days prior to submitting the first Application for Payment using forms provided by the Construction Manager.

B. Do not apply for payment until the Schedule of Values has been approved by the Construction Manager.

C. Divide the cost associated with each line item in the Schedule of Values into installation and materials components.

1. Installation cost is to include all cost associated with the line item except materials cost.

2. Materials cost is the direct cost (as verified by invoice values) for products, materials, and equipment to be permanently incorporated into the Project associated with the line item.

3. Installation cost is to include all direct costs and a proportionate amount of the indirect costs for the Work associated with each line item. Include costs not specifically set forth as an individual payment item but required to provide a complete and functional system.

4. The sum of materials and installation costs for all line items must equal the Contract Price.

D. Use each unit price line item in the Agreement as a line item in the Schedule of Values. The sum of materials and installation costs for each line item for unit price contracts must equal the value of the line item in the Agreement. In addition to the installation cost described in Paragraph 1.02.C.3, installation costs for unit price items are to include costs for waste and overages.

1. Installation and materials cost may be left as a single installation component if:

a. Contractor does not intend to request payment for stored materials for that line item; or

b. Work in the line item will be completed within a single payment period.

2. Provide adequate detail to allow a more accurate determination of the earned value for installation costs, expressed as a decimal fraction of Work completed, for each line item.

3. Installation cost line items may not exceed $50,000.00. Items that are not subdivided into smaller units may only be included in the Application for Payment when Work on the entire unit is complete.

4. Lump sum items may be divided into an estimated number of units to estimate earned value. The estimated number of units times the cost per unit must equal the lump sum amount for that line item.

5. Include Contractor's overhead and profit in the installation costs each line item in proportion to the value of the line item to the Contract Price.

6. Include cost not specifically set forth as an individual payment item but required to provide a complete and functional system in the Contract Price for each item.

7. Line items may be used to establish the value of Work to be added or deleted from the Project.

E. Include a breakdown of both mobilization and demobilization costs in the Schedule of Values. The total cost for both mobilization and demobilization may not exceed five percent of the total Contract Price. Payment for mobilization and demobilization will be based on the earned value of Work completed. Payment for these costs will only be made for Work completed for the following:

1. Bonds and insurance;

2. Transportation and setup for equipment;

3. Transportation and/or erection of all field offices, sheds, and storage facilities;

4. Salaries for preparation of documents required before the first Application for Payment; and

5. Salaries for field personnel directly related to the mobilization of the Project.

1.03 SCHEDULE OF ANTICIPATED PAYMENTS

A. Submit a schedule of the anticipated Application for Payments showing the anticipated application numbers, submission dates, and the amount to be requested for each Application for Payment on the form provided by the Construction Manager.

B. Update the schedule of anticipated payments as necessary to provide a reasonably accurate indication of the funds required to make payments each month to the Contractor for Work performed.

1.04 ALTERNATES, ALLOWANCES, AND EXTRA WORK ITEMS

A. Include line items and amounts for specified alternate Work and allowances for Work in the Agreement, if any, and as described in Section 01 23 10 "Alternates and Allowances."

B. Include line items and amounts for Extra Work items in the Agreement, if any, and as described in Section 01 29 01 "Measurement and Basis for Payment."

1.05 RETAINAGE AND SET-OFFS

A. Retainage will be withheld from each Application for Payment per the Agreement.

B. Reduce payments for set-offs per the General Conditions as directed by the Construction Manager.

1.06 PROCEDURES FOR SUBMITTING AN APPLICATION FOR PAYMENT

A. Submit a draft Application for Payment to the Construction Manager each month at least 7 days before the date established in the Agreement for Owner to make progress payments. Do not submit Applications for Payment more often than monthly. Review the draft Application for Payment with the Construction Manager to determine concurrence with:

1. Values requested for materials and equipment, stored or incorporated into the Project as documented by invoices;

2. The earned value for installation costs for each line item in the Application for Payment form expressed as a percent complete for that line item;

3. The quantity of Work completed for each unit price item;

4. Amount of retainage to be held; and

5. Set-offs included in the Application for Payment.

B. Submit Applications for Payment to the Construction Manager after agreement has been reached on the draft Application for Payment with the Construction Manager.

C. Provide all information requested in the Application for Payment form. Do not leave any blanks incomplete. If information is not applicable, enter “N/A” in the space provided.

1. Number each application sequentially and include the dates for the application period.

2. Complete the “Contract Time Summary” on the Application for Payment form. If “Days Final Completion is (ahead/behind) Schedule” (line q) shows Project is more than 30 days behind schedule, revise the Schedule of Anticipated Payments to correspond to the updated schedule required per Section 01 33 05 “Construction Progress Schedule.”

3. Complete the “Summary of Earned Value and Set-offs” on the Application for Payment form. Show the total amounts for earned value of original Contract performed, earned value for Work on approved Contract Amendments and Change Orders, retainage and set-offs.

4. Sign and date the Contractor’s Certification on the Application for Payment form that all Work, including materials, covered by this Application for Payment have been completed or delivered and stored in accordance with the Contract Documents, that all amounts have been paid for Work, materials, and equipment for which previous Payment has been made by the Owner, and that the current payment amount shown in this Application for Payment is now due.

5. Include “Attachment A - Tabulation of Earned Value of Original Contract Performed” to show the value of materials stored and successfully incorporated into the Project and the earned value for installation of the Work for each line item in the Application for Payment for Work. Attachment A includes Work on the original Contract Price and on approved Contract Amendments and Change Orders.

6. Include “Attachment B - Tabulation of Values for Materials and Equipment” to track invoices used to support amounts requested as materials in Attachment A. Enter materials to show the amount of the invoice assigned to each item in Attachment A if an invoice includes materials used on several line items.

7. Include “Attachment C - Summary of Set-offs” to document set-offs made per the Contract Documents. Show each set-off as it is applied. Show a corresponding line item to reduce the set-off amount if a payment held by a set-off is released for payment.

8. Include “Attachment D - Retainage Calculation” to show method for calculating retainage. The amount of retainage with respect to progress payments is stipulated in the Agreement. Any request for a reduction in retainage must be accompanied by a Consent of Surety to Reduction or Partial Release of Retainage.

9. Include “Attachment E - EVA Calculation” and the EVA Chart showing the anticipated and actual Total Earned Value of Fees, Work, and Materials. Create a graphic representation (curve) of the anticipated progress on the Project each month. Compare the anticipated cumulative Total Earned Value of Fees, Work, and Materials to the actual Total Earned Value of Fees, Work, and Materials to determine performance on budget and schedule. Adjust the table and curve to incorporate Modifications.

D. Submit attachments in Portable Document Format (PDF).

1. Generate attachments to the Application for Payment using the Excel spreadsheet provided by the Construction Manager.

2. Submit PDF documents with adequate resolution to allow documents to be printed in a format equivalent to the document original. Documents are to be scalable to allow printing on standard 8-1/2 x 11 or 11 x 17 paper.

1.07 ADJUSTMENTS TO THE SCHEDULE OF VALUES IN THE APPLICATION FOR PAYMENT

A. Submit a Change Proposal to request any changes to the Schedule of Values incorporated into the Application for Payment once approved. A Field Order will be issued by the Construction Manager to modify the Application for Payment form if approved.

B. Payment for materials and equipment shown in the Application for Payment will be made for the total of associated invoice amounts, up to the value shown for materials in the Application for Payment for that line item.

1. If the total amount for invoices for materials and equipment for a line item are less than the amount shown for the materials component of that line item in the Application for Payment, and it can be demonstrated that no additional materials or equipment are required to complete Work described in that item, the difference between the total invoice for materials and equipment and the materials component for that line item can be added to the installation component of that Work item.

2. Costs for material and equipment in excess of the value shown in the Schedule of Values may not be paid for under other line items.

1.08 CONSTRUCTION MANAGER’S RESPONSIBILITY

A. Construction Manager will review each draft Application for Payment with Contractor to reach an agreement on the amount to be recommended to Owner for payment. Contractor is to revise the Application for Payment to incorporate changes, if any, resulting from this review process.

B. Construction Manager will review the Application for Payment to determine that the Application for Payment has been properly submitted and is in accordance with the agreed to draft Application for Payment.

C. Construction Manager will either recommend payment of the Application for Payment to Owner or notify the Contractor of the reasons for not recommending payment. Contractor may make necessary corrections and resubmit the Application for Payment. Construction Manager will review resubmitted Application for Payment and reject or recommend payment of the Application for Payment to Owner as appropriate.

D. Construction Manager's recommendation of the Application for Payment constitutes a representation that based on its experience and the information available:

1. The Work has progressed to the point indicated;

2. The quality of the Work is generally in accordance with the Contract Documents; and

3. Requirements prerequisite to payment have been met.

E. This representation is subject to:

1. Further evaluation of the Work as a functioning whole;

2. The results of subsequent tests called for in the Contract Documents; or

3. Any other qualifications stated in the recommendation.

F. Construction Manager does not represent by recommending payment that:

1. Inspections made to check the quality or the quantity of the Work as it was performed were exhaustive or extended to every aspect of the Work in progress; or

2. Other matters or issues that might entitle Contractor to additional compensation or entitle Owner to withhold payment to Contractor exist.

G. Neither Construction Manager's review of Contractor's Work for the purposes of recommending payments nor Construction Manager's recommendation of payment imposes responsibility on the Construction Manager or Owner:

1. To supervise, direct, or control the Work;

2. For the means, methods, techniques, sequences, or procedures of construction, or safety precautions and programs;

3. For Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;

4. To make examinations to ascertain how or for what purposes Contractor has used the monies paid on account of the Contract Price; or

5. To determine that title to the Work, materials, or equipment has passed to Owner free and clear of Liens.

1.09 FINAL APPLICATION FOR PAYMENT

A. Include adjustments to the Contract Price in the final Application for Payment for:

1. Approved Change Orders and Contract Amendments;

2. Allowances not previously adjusted by Change Order;
3. Deductions for Defective Work that have been accepted by the Owner;
4. Penalties and bonuses;
5. Deduction for all final set-offs; and
6. Other adjustments if needed.

B. Construction Manager will prepare a final Change Order reflecting the approved adjustments to the Contract Price which have not been covered by previously approved Change Orders and, if necessary, to reconcile estimated unit price quantities with actual quantities.

C. Submit the final Application for Payment per the General Conditions, including the final Change Order. Provide the following with the final Application for Payment:
1. Evidence of payment or release of Liens on the forms provided by the Construction Manager and as required by the General Conditions.
2. Consent from surety to final payment.

D. Final payment will also require additional procedures and documentation per Section 01 70 00 “Execution and Closeout Requirements.”

1.10 PAYMENT BY OWNER

A. Owner is to pay the amount recommended for monthly payments within 30 days after receipt of the Construction Manager’s recommended Application for Payment.

B. Final payment may take longer than 30 days since Owner’s board may be required to approve final payment.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 29 01 MEASUREMENT AND BASIS FOR PAYMENT

PART 1 - GENERAL

1.01 PAYMENT FOR MATERIALS AND EQUIPMENT

A. Payment will be made for materials and equipment materials properly stored and successfully incorporated into the Project less the specified retainage.

B. Provide a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of Liens. Provide documentation of payment for materials and equipment with the next Application for Payment. Remove items from the tabulation of materials and equipment if this documentation is not provided with the next Application for Payment.

C. Provide evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest.

D. The Work covered by progress payments becomes the property of the Owner at the time of payment. The Contractor's obligations with regard to proper care and maintenance, insurance, and other requirements are not changed by this transfer of ownership until final acceptance in accordance with the General Conditions.

E. Payment for materials and equipment does not constitute acceptance of the product.

1.02 MEASUREMENT AND BASIS FOR PAYMENTS ON LUMP SUM ITEMS

Measurement for progress payments is the invoice value for stored materials and the earned value for all other cost for constructing each item. Earned value is expressed as the value of the Work completed divided by the total value of installation cost. The total amount paid will be equal to the total lump sum amount for that item.

1.03 MEASUREMENT AND BASIS FOR PAYMENTS ON UNIT PRICE ITEMS

A. Measure the Work using the unit of measure indicated in this Section for each unit price line item. Payment will be made only for the actual measured unit and/or computed length, area, solid contents, number, and weight unless other provisions are made in the Contract Documents. Payment on a unit price basis will not be made for Work outside dimensions shown in the Contract Documents.

B. Payment will be made for the actual quantity of Work completed and for materials and equipment stored during the payment period. Payment amount is the Work quantity measured per Paragraph A above multiplied by the unit price for that line item in the Agreement.

1.04 MEASUREMENT AND BASIS FOR PAYMENT FOR BASE ITEMS

Measurement and basis for payment will be made as indicated in Section 00 41 16 "Bid Form Exhibit 'A'", and as indicated below:

A. Item No. 1 – Mobilization and Demobilization:

Measuring for payment is on a lump sum basis. Payment for mobilization and demobilization will be based on the earned value of the Work completed.

B. Item No. 3 – Install, maintain and remove Storm Water Pollution Prevention Plan:

This item includes all work and materials required to design, install and maintain the storm water pollution prevention plan. It will be the responsibility of the Contractor to inform the Owner's field representative as to where measures are implemented. Partial payment of 50% will be allowed after the installation has been approved by the Owner. The remainder (minus retainage) will be paid at the time of substantial completion and will be made at the unit price bid. Failure to properly monitor and maintain the approved plan by the Contractor throughout the project construction period may result in a maximum payment of 50% of the unit price bid.

C. Item No. 5 – Provide and Adhere to Asbestos Abatement Plan:

This item includes all work and materials required to provide and asbestos abatement plan and proper management, handling and disposal of asbestos materials as required to complete the project. Measurement and payment will be based on a Lump Sum quantity. Partial payment of 25% will be paid upon approval of the Contractor's plan by the Engineer. The remainder (minus retainage) will be paid after all work relating to or impacting asbestos materials is complete and approved by the Owner. No payment for this item will be made until the plan has been submitted and reviewed by the Owner. Failure to properly monitor and maintain the approved plan by the Contractor throughout the project construction period may result in a maximum payment of 25% of the unit price bid.

D. Item No. 7, 35, 44, 73, 84, 106 – Design, install, maintain, and remove Traffic Control Plan and Devices:

This item includes all work and materials required to design, install and maintain a traffic control plan as required by the City of Port Isabel and TXDOT. Measurement and payment will be based on a Lump Sum quantity. It will be the responsibility of the Contractor to inform the Owner's field representative as to where traffic control measures are implemented. Partial payment of 25% will be paid upon approval of the Contractor's traffic control plan by the Engineer. Partial payment of 50% will be allowed after the installation has been approved by the Owner. No payment for this item will be made until the plan has been submitted and reviewed by the Owner. The remainder (minus retainage) will be paid at the time of substantial project completion and will be made at the unit price bid. Failure to properly monitor and maintain the approved plan by the Contractor throughout the project construction period may result in a maximum payment of 75% of the unit price bid. Contractor shall coordinate all traffic controls with TXDOT. Traffic control plan shall be sealed by an Engineer licensed in the State of Texas.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 31 00 PROJECT MANAGEMENT AND COORDINATION

PART 1 - GENERAL

1.01 SUMMARY

A. Furnish resources required to complete the Project in accordance with the Contract Documents and within the Contract Times.

B. Construct Project in accordance with current safety practices.

C. Manage Site to allow access to Site and control construction operations.

D. Construct temporary facilities to provide and maintain control over environmental conditions at the Site. Remove temporary facilities when no longer needed.

E. Provide temporary controls for pollution, management of water, and management of excess earth as required in Section 01 57 00 “Temporary Controls.”

1.02 STANDARDS

A. Perform Work to comply with:

1. Requirements of the Contract Documents;

2. Laws and Regulations; and

3. Specified industry standards.

1.03 DOCUMENTATION

A. Provide documents in accordance with Section 01 33 00 “Document Management.”

B. Provide copies of Supplier’s printed storage instructions prior to furnishing materials or products and installation instructions prior to beginning the installation.

C. Incorporate field notes, sketches, recordings, and computations made by the Contractor in Record Drawings per Section 01 31 13 “Project Coordination.”

1.04 PERMITS

A. Obtain building permits for the Project from the local authorities having jurisdiction. Pay building permit fees and include these costs in the Contract Price.

B. Obtain Right-of-Way permit from the City of Port Isabel prior to construction in the right-of-way.

C. Obtain environmental permits required for construction at the Site.

D. Provide required permits for transporting heavy or oversized loads.

E. Provide other permits required to conduct any part of the Work.

F. Arrange for inspections and certification by agencies having jurisdiction over the Work and include the cost for these inspections and certifications in the Contract Price.

G. Make arrangements with private utility companies and pay fees associated with obtaining services or inspections.

H. Retain copies of permits and licenses at the Site and comply with all regulations and conditions of the permit or license.

1.05 SAFETY REQUIREMENTS

A. Manage safety to protect the safety and welfare of persons at the Site.

B. Provide safe access to move through the Site. Provide protective devices to warn and protect from hazards at the Site.

C. Provide safe access for those performing tests and inspections.

D. Maintain a supply of personal protective equipment for visitors to the Site.

E. Comply with latest provisions of the Occupational Health and Safety Administration (OSHA) and other Laws and Regulations.

F. Cooperate with accident investigations. Provide two copies of all reports, including insurance company reports, prepared concerning accidents, injuries, or deaths related to the Project to the Construction Manager as Record Data per Section 01 31 13 “Project Coordination.”

1.06 ACCESS TO THE SITE

A. Maintain access to the facilities at all times. Do not obstruct roads, pedestrian walks, or access to the various buildings, structures, stairways, or entrances. Provide safe access for normal operations during construction.

B. Provide adequate and safe access for inspections. Leave ladders, bridges, scaffolding, and protective equipment in place until inspections have been completed. Construct additional safe access if required for inspections.

C. Use roadways for construction traffic only with written approval of the appropriate representatives of each entity. Roadways may not be approved for construction traffic. Obtain written approval to use roads to deliver heavy or oversized loads to the Site. Furnish copies of the written approvals to the Construction Manager as Record Data per Section 01 31 13 “Project Coordination.”

1.07 CONTRACTOR’S USE OF THE SITE

A. Limit the use of Site for Work and storage to those areas designated on the Drawings or approved by the Construction Manager. Coordinate the use of the Site with the Construction Manager.

B. Provide security at the Site as necessary to protect against vandalism and loss by theft.

C. Park construction equipment in designated areas only and provide spill control measures as discussed in Section 01 57 00 “Temporary Controls.”

D. Park employees’ vehicles in designated areas only.

E. Obtain written permission of the property owner before entering privately-owned land outside of the Owner’s property, rights-of-way, or easements.

F. Cooperate with public and private agencies with facilities operating within the limits of the Project. Provide 48 hours' notice to any applicable agency when Work is anticipated to proceed in the vicinity of any facility by using Texas 811.

G. Conduct of Contractor's or Subcontractor's Employees:

1. Do not permit alcoholic beverages or illegal substances on the Site. Do not allow persons under the influence of alcoholic beverages or illegal substances to enter or remain on the Site at any time. Persons on Site under the influence of alcoholic beverages or illegal substances will be permanently prohibited from returning to the Site. Criminal or civil penalties may also apply.

2. Do not allow the use of offensive language or sexual harassment in any form. These actions will cause immediate and permanent removal of the offender from the premises. Criminal or civil penalties may apply.

3. Require workers to wear clothing that is inoffensive and meets safety requirements. Do not allow sleeveless shirts, shorts, or any exceedingly torn, ripped, or soiled clothing to be worn on the Site.

4. Do not allow the use, possession, concealment, transportation, promotion, or sale of the following prohibited items anywhere on the Site:

a. Firearms (including air rifles and pistols and BB or pellet guns) and ammunition;

b. Bows, crossbows, arrows, bolts, or any other projectile weapons;

c. Explosives of any kind, including fireworks;

d. Illegal knives;

e. Other weapons prohibited by state Laws and Regulations; and

f. Any other item that has been designed or intended to be used as a weapon.

No exceptions will be made for the possession of a firearm by a person that has a valid state-issued license to carry a firearm. Remove any of the prohibited items listed above from the Site immediately and permanently. Any person found to be in possession of any prohibited item must also be removed from the Site and may be reported to local law enforcement.

1.08 PROTECTION OF EXISTING STRUCTURES AND UTILITIES

A. Examine the Site and review the available information concerning the Site. Locate utilities, underground facilities, and existing structures. Verify the elevations of the structures adjacent to excavations. Report any discrepancies from information in the Contract Documents to the Construction Manager before beginning construction.

B. Determine if existing structures, poles, piping, or other utilities at excavations will require relocation or replacement. Prepare a Plan of Action per Section 01 31 13 "Project Coordination." Coordinate Work with local utility company and others for the relocation or replacement.

C. Protect utilities, underground facilities and existing structures unless they are shown to be replaced or relocated on the Drawings. Restore damaged items to the satisfaction of the Owner and utility or property owner.

D. Carefully support and protect all structures and/or utilities so that there will be no failure or settlement where excavation or demolition endangers adjacent structures and utilities. Do not take existing utilities out of service unless required by the Contract Documents or approved by the Construction Manager. Notify and cooperate with the utility owner if it is necessary to move services, poles, guy wires, pipelines, or other obstructions.

E. Protect existing trees and landscaping at the Site. Mark trees that may be removed during construction and review with the Construction Manager for approval before removing. Protect trees to remain from damage limiting activity, including stockpiling of materials within the drip line of the tree.

F. Protect buildings from damage when handling material or equipment. Protect finished surfaces, including floors, doors, and jambs. Remove doors and install temporary wood protective coverings over jambs, if needed.

1.09 DISRUPTION TO SERVICES/CONTINUED OPERATIONS

A. Owner's facilities are to continue in service as usual during the construction unless noted otherwise. Owner or utilities must be able to operate and maintain the facilities. Keep disruptions to existing utilities, piping, process piping, or electrical services to a minimum.

1. Do not restrict access to critical valves, operators, or electrical panels.

2. Do not store material or products inside structures unless authorized by the Construction Manager.

3. Limit operations to the minimum amount of space needed to complete the specified Work.

4. Maintain storm sewers and sanitary sewers in service at all times. Provide temporary service around the construction or otherwise construct the Work in a manner that flow is not restricted.

B. Provide a Plan of Action in accordance with Section 01 35 00 "Special Procedures" if facilities must be taken out of operation.

1.10 FIELD VERIFICATION

A. Perform complete field measurements prior to purchasing products or beginning construction for products required to fit existing conditions.

B. Verify property lines, control lines, grades, and levels indicated on the Drawings.

C. Verify pipe class, equipment capacities, existing electrical systems, and power sources for existing conditions.

D. Check Shop Drawings and indicate the actual dimensions available where products are to be installed.

E. Include field measurements in Record Documents as required in Section 01 31 13 "Project Coordination."

1.11 REFERENCE DATA AND CONTROL POINTS

A. Construction Manager will provide the following control points:

1. Base line or grid reference points for horizontal control.

2. Benchmarks for vertical control.

B. Locate and protect control points prior to starting the Work and preserve permanent reference points during construction. Designated control points may be on an existing structure or monument. Do not change or relocate points without prior approval of the Construction Manager. Notify Construction Manager when a reference point is lost, destroyed, or requires relocation. Replace Project control points on the basis of the original survey. Control points or benchmarks damaged, disturbed or destroyed as a result of the Contractor's negligence will be restored by the Construction Manager. Owner will impose a set-off as compensation for the effort required.

C. Provide complete engineering layout of the Work needed for construction.

1. Provide competent personnel. Provide equipment including accurate surveying instruments, stakes, platforms, tools, and materials.

2. Provide surveying with accuracy meeting the requirements established for Category 5 Construction Surveying as established in the Manual of Practice of Land Surveying in Texas published by the Texas Society of Professional Surveyors, latest revision.

3. Provide Record Data per Section 01 31 13 "Project Coordination" and measurements per standards.

1.12 DELIVERY AND STORAGE

A. Deliver products and materials to the Site in time to prevent delays in construction.

B. Deliver packaged products to Site in original undamaged containers with identifying labels attached. Open cartons as necessary to check for damage and to verify invoices. Reseal cartons and store properly until used. Leave products in original packages or other containers until installed. If original packages or containers are damaged, repackage in containers and include packing slips, labels and other information from the original packaging.

C. Deliver products that are too large to fit through openings to the Site in advance of the time enclosing walls and roofs are erected. Set in place, raised above floor on cribs or pallets.

D. Assume full responsibility for the protection and safekeeping of products stored at the Site.

E. Store products at locations acceptable to the Construction Manager and to allow Owner access to maintain and operate existing facilities.

F. Store products in accordance with the Supplier's storage instructions immediately upon delivery. Leave seals and labels intact. Arrange storage to allow access for maintenance of stored items and for inspection. Store unpacked and loose products on shelves, in bins, or in neat groups of like items.

G. Provide additional storage areas as needed for construction. Store products subject to damage by elements in substantial weather-tight enclosures or storage sheds. Provide and

maintain storage sheds as required for the protection of products. Provide temperature, humidity control, and ventilation within the ranges stated in the Supplier's instructions. Remove storage facilities at the completion of the Project.

H. Protect the pipe interior. Keep all foreign materials such as dirt, debris, animals, or other objects out of the pipe during the Work.

I. Provide adequate exterior storage for products that may be stored out-of-doors.

1. Provide substantial platforms, blocking, or skids to support materials and products above ground which has been sloped to provide drainage. Protect products from soiling or staining.

2. Cover products subject to discoloration or deterioration from exposure to the elements, with impervious sheet materials. Provide ventilation to prevent condensation below covering.

3. Store loose, granular materials on clean, solid surfaces, or on rigid sheet materials, to prevent mixing with foreign matter.

4. Provide surface drainage to prevent erosion and ponding of water.

5. Prevent mixing of refuse or chemically injurious materials or liquids with stored materials.

6. Pipes and conduits stored outdoors are to have open ends sealed to prevent the entrance of dirt, moisture, and other injurious materials. Protect PVC pipe from ultraviolet light exposure.

7. Store products to prevent wind damage.

J. Protect and maintain mechanical and electrical equipment in storage.

1. Provide Supplier's service instructions on the exterior of the package.

2. Service equipment on a regular basis as recommended by the Supplier. Maintain a log of maintenance services. Submit the log as Record Data per Section 01 31 13 "Project Coordination" when Owner assumes responsibility for maintenance and operation.

3. Provide power to and energize space heaters for all equipment for which these devices are provided.

4. Provide temporary enclosures for all electrical equipment, including electrical systems on mechanical devices. Provide and maintain heat in the enclosures until equipment is energized.

K. Maintain storage facilities. Inspect stored products on a weekly basis and after periods of severe weather to verify that:

1. Storage facilities continue to meet specified requirements;

2. Supplier's required environmental conditions are continually maintained; and

3. Products that can be damaged by exposure to the elements are not adversely affected.

L. Replace any stored item damaged by inadequate protection or environmental controls.

M. Payment may be withheld for any products not properly stored.

1.13 CLEANING DURING CONSTRUCTION

A. Provide positive methods to minimize raising dust from construction operations and provide positive means to prevent air-borne dust from disbursing into the atmosphere. Control dust and dirt from demolition, cutting, and patching operations.

B. Clean the Site as Work progresses and dispose of waste materials, keeping the Site free from accumulations of waste or rubbish. Provide containers at the Site for waste collection. Do not allow waste materials or debris to blow around or off of the Site. Control dust from waste materials. Transport waste materials with as few handlings as possible.

C. Comply with Laws and Regulations. Do not burn or bury waste materials. Remove waste materials, rubbish, and debris from the Site and legally dispose of these at public or private disposal facilities.

1.14 MAINTENANCE OF ROADS, DRIVEWAYS, AND ACCESS

A. Contractor is provided a traffic control plan for the project in accordance with the Manual on Uniform Traffic Control Devices (MUTCD). Plan must be sealed by an Engineer licensed in the state of Texas and submitted for review. All work within the TxDOT ROW must be in accordance with TxDOT. Will be subject to review by TxDOT prior to starting the work.

B. Maintain roads and streets in a manner that is suitable for safe operations of public vehicle during all phases of construction unless the Owner approves a street closing. Do not close public roads overnight. Coordinate and arrange for emergency vehicle access when streets are to be closed.

C. Submit a Notification by Contractor for Owner's approval of a street closing. The request must state:

1. The reason for closing the street.
2. How long the street will remain closed.
3. Procedures to be taken to maintain the flow of traffic.

D. Obtain permits and permissions of the entity that owns the road prior to any Work and provide a copy of the permit or permission Record Data per Section 01 31 13 "Project Coordination."

E. Construct temporary detours, including by-pass roads around construction, with adequately clear width to maintain the free flow of traffic at all times. Maintain barricades, signs, and safety features around the detour and excavations. Maintain barricades, signs, and safety features around the Work in accordance with all provisions of the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD).

F. Assume responsibility for any damage resulting from construction along roads or drives.

1.15 BLASTING

Blasting is not allowed for any purpose.

1.16 ARCHAEOLOGICAL REQUIREMENTS

A. Cease operations immediately and contact the Owner for instructions if historical or archaeological artifacts are found during construction.

B. Conduct all construction activities to avoid adverse impact of the sites where significant historical or archaeological artifacts are found or identified as an area where other artifacts could be found.

1. Obtain details for working in these areas from regulatory agencies.

2. Maintain confidentiality regarding the site(s) of artifacts.

3. Adhere to the requirements of applicable local, state, and federal Laws and Regulations.

4. Notify the Construction Manager and any local, state, or federal agency as required by applicable Laws and Regulations.

C. Do not disturb archaeological sites.

1. Obtain the services of a qualified archaeological specialist to instruct construction personnel on how to identify and protect archaeological finds on an emergency basis.

2. Coordinate activities to permit archaeological work to take place within the area.

a. Attempt to archaeologically clear areas needed for construction as soon as possible.

b. Provide a determination of priority for such areas.

D. Assume responsibility for any unauthorized destruction that might result to such sites by construction personnel, and pay all penalties assessed by state or federal agencies for non-compliance with these requirements.

E. Contract Times will be modified to compensate for delays caused by such archaeological finds. No additional compensation will be paid for delays.

1.17 ENDANGERED SPECIES RESOURCES

A. Do not perform any activity that is likely to destroy or adversely modify the habitat or jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA) or applicable state Laws and Regulations.

B. Cease Work immediately in the area of the encounter and notify the Construction Manager if a threatened or endangered species is encountered during construction. Construction Manager will implement actions in accordance with the ESA and applicable state statutes. Resume construction in the area of the encounter when authorized to do so by the Construction Manager.

1.18 OCCUPANCY

A. Owner has the right to occupy or operate any portion of the Project that is ready for use after notifying the Contractor of its intent to do so.

B. Testing of equipment and appurtenances including specified test periods, training, and startup does not constitute acceptance for operation.

C. Owner may accept the facility for continued use after startup and testing at the option of the Owner. If acceptance is delayed at the option of the Owner, shut down facilities per approved operation and maintenance procedures.

D. The execution of bonds is understood to indicate the consent of the surety to these provisions for occupancy of the structures and use of equipment.

E. Provide an endorsement from the insurance carrier permitting occupancy of the structures and use of equipment during the remaining period of construction.

F. Conduct operations to ensure the least inconvenience to the Owner and general public.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 31 13 PROJECT COORDINATION

PART 1 - GENERAL

1.01 WORK INCLUDED

Administer contract requirements to construct the Project. Provide documentation per the requirements of this Section. Provide information as requested by the OPT.

1.02 DOCUMENTATION

Provide documents in accordance with Section 01 33 00 “Document Management.”

1.03 COMMUNICATION DURING THE PROJECT

A. Construction Manager is to be the first point of contact for all parties on matters concerning this Project.

B. Construction Manager will coordinate correspondence concerning:

1. Contract administration;
2. Clarification and interpretation of the Contract Documents;
3. Contract modifications;
4. Observation of Work and testing; and
5. Claims.

C. Construction Manager will normally communicate only with the Contractor. Any required communication with Subcontractors or Suppliers will only be with the direct involvement of the Contractor.

D. Direct written communications to the Construction Manager at the address indicated at the pre-construction conference. Include the following with communications as a minimum:

1. Name of the Owner;
2. Project name;
3. Contract title;
4. Project number;
5. Date; and
6. A reference statement.

E. Submit communications on the forms referenced in this Section or in Section 01 33 00 “Document Management.”

1.04 PROJECT MEETINGS

A. Pre-Construction Conference:

1. Attend a pre-construction conference;
2. The location of the conference will be determined by the Construction Manager;

3. The time of the conference will be determined by the Construction Manager, but will be after the Notice of Award is issued and not later than 15 days after the Notice to Proceed is issued;
4. The OPT, Contractor's project manager and superintendent, representatives of utility companies, and representatives from major Subcontractors and Suppliers may attend the conference; and
5. Provide and be prepared to discuss:
    a. Preliminary construction schedule per Section 01 33 05 "Construction Progress Schedule";
    b. Preliminary Schedule of Documents per Section 01 33 00 "Document Management";
    c. Schedule of Values and anticipated schedule of payments per Section 01 29 00 "Application for Payment Procedures";
    d. List of Subcontractors and Suppliers;
    e. Contractor's organizational chart as it relates to this Project; and
    f. Letter indicating the agents of authority for the Contractor and the limit of that authority with respect to the execution of legal documents, contract modifications, and payment requests.

B. Progress Meetings:
1. Attend meetings with the Construction Manager, Design Professional, and Owner.
    a. Meet monthly or as requested by the Construction Manager to discuss the Project.
    b. Meet at the Site or other location as designated by the Construction Manager.
    c. Contractor's superintendent and other key personnel are to attend the meeting. Other individuals may be requested to attend to discuss specific matters.
    d. Notify the Construction Manager of any specific items to be discussed a minimum of 1 week prior to the meeting.
2. Provide information as requested by the Construction Manager, Design Professional or Owner concerning this Project. Prepare to discuss:
    a. Status of overall project schedule;
    b. Contractor's detailed schedule for the next month;
    c. Anticipated delivery dates for equipment;
    d. Coordination with the Owner;
    e. Status of documents;
    f. Information or clarification of the Contract Documents;
    g. Claims and proposed modifications to the Contract;
    h. Field observations, problems, or conflicts; and

i. Maintenance of quality standards.

3. Construction Manager will prepare a record of meeting proceedings. Review the record of the meeting and notify the Construction Manager of any discrepancies within 10 days of the date the record of the meeting is provided. The record will not be corrected after the 10 days have expired. Corrections will be reflected in the record of the following meeting.

C. Pre-Documentation and Pre-Installation Meetings:

1. Conduct pre documentation and pre installation meetings as required in the individual technical Specifications or as determined necessary by the Construction Manager (for example, instrumentation, roofing, concrete mix design, etc.).

2. Set the time and location of the meetings when ready to proceed with the associated Work. Submit a Notification by Contractor in accordance with Paragraph 1.07 for the meeting 2 weeks before the meeting. OPT must approve of the proposed time and location.

3. Attend the meeting and require the participation of appropriate Subcontractors and Suppliers in the meeting.

4. Construction Manager will prepare a record of meeting proceedings. Review the record of the meeting and notify the Construction Manager of any discrepancies within 10 days of the date the record of the meeting is provided. The record will not be corrected after the 10 days have expired. Corrections will be reflected in the record of the following meeting.

D. Weekly Coordination Meetings: Meet on a weekly basis with the Construction Manager or designated on-site representative of the OPT to discuss Work planned for the following week, review coordination issues, testing required, or other issues. Records of these meetings are not required.

1.05 REQUESTS FOR INFORMATION

A. Submit a Request for Information to the Construction Manager to obtain additional information or clarification of the Contract Documents.

1. Submit a separate Request for Information for each item on the form provided by the Construction Manager.

2. Attach adequate information to permit a response without further clarification. Construction Manager will return requests that do not have adequate information to the Contractor for additional information. Contractor is responsible for all delays resulting from multiple reviews due to inadequate information.

3. A response will be made when adequate information is provided. The response will be made on the Request for Information form provided by the Construction Manager.

B. Response to a Request for Information is given to provide additional information, interpretation, or clarification of the requirements of the Contract Documents, and does not modify the Contract Documents.

1. Submit a Change Proposal per Section 01 26 00 “Change Management” if a contract modification is suggested or required.

C. Use the Decision Register to document decisions made at meetings and actions to be taken in accordance with Paragraph 1.06.

D. Use the Action Item Register to document assignments for actions to be taken in accordance with Paragraph 1.06.

1.06 DECISION AND ACTION ITEM REGISTER

A. Construction Manager will maintain a Decision Register to document key decisions made during meetings, telephone conversations, or visits to the Site using the format provided by the Construction Manager:

1. Review the Decision Register prior to each regular meeting.

2. Report any discrepancies to the Construction Manager for correction or discussion at the next monthly meeting.

B. Construction Manager will maintain an Action Item Register in conjunction with the Decision Register to track assignments made during meetings, telephone conversations or visits to the Site using the format provided by the Construction Manager:

1. Review the Action Item Register prior to each regular meeting.

2. Report actions taken after the previous progress meeting on items in the register assigned to the Contractor or through the Contractor to a Subcontractor or Supplier to the Construction Manager. Report on status of progress 1 week prior to each progress meeting established in Paragraph 1.04 to allow Construction Manager to update the register prior to the Progress Meetings.

3. Be prepared to discuss the status at each meeting.

C. Decisions or action items in the register that require a change in the Contract Documents will have the preparation of a Modification as an action items if appropriate. The Contract Documents can only be changed by a Modification.

1.07 NOTIFICATION BY CONTRACTOR

A. Notify the Construction Manager of:

1. Need for testing;

2. Intent to work outside regular working hours;

3. Request to shut down facilities or utilities;

4. Proposed utility connections;

5. Required observation by Construction Manager, Engineer, or inspection agencies prior to covering Work; and

6. Training.

B. Provide notification a minimum of 2 weeks in advance in order to allow OPT time to respond appropriately to the notification.

C. Use the Notification by Contractor form provided by the Construction Manager.

1.08 REQUESTS FOR MODIFICATIONS

A. Submit requests for Modifications per Section 01 26 00 “Change Management.”

1.09 PLAN OF ACTION

A. Submit a written Plan of Action for approval for shutting down essential services. These include:
   1. Electrical power;
   2. Control power;
   3. Process piping;
   4. Process equipment;
   5. Communications equipment; and
   6. Other designated functions.

B. Describe the following in the Plan of Action:
   1. Scheduled dates for construction;
   2. Work to be performed;
   3. Utilities, piping, or services affected;
   4. Length of time the service or utility will be disturbed;
   5. Procedures to be used to carry out the Work;
   6. Plan of Action to handle emergencies;
   7. List of manpower, equipment, and ancillary supplies;
   8. Backups for key pieces of equipment and key personnel;
   9. Contingency plan that will be used if the original schedule cannot be met; and

C. Submit plan 2 weeks prior to beginning the Work.

1.10 RECORD DATA

A. Submit information required by the Contract Documents that is not related to a product as Record Data using the form provided by the Construction Manager.

1.11 RECORD DOCUMENTS

A. Maintain one complete set of printed Record Documents at the Site including:
   1. Drawings;
   2. Specifications;
   3. Addenda;
   4. Modifications;
   5. Product Data and approved Shop Drawings;

6. Construction photographs;
7. Test Reports;
8. Clarifications and other information provided in Request for Information responses; and
9. Reference standards.

B. Store printed Record Documents and Samples in the Contractor's field office.
1. Record Documents are to remain separate from documents used for construction.
2. Provide files and racks for the storage of Record Documents.
3. Provide a secure storage space for the storage of Samples.
4. Maintain Record Documents in clean, dry, legible conditions, and in good order.
5. Make Record Documents and Samples available at all times for inspection by the OPT.

C. Maintain an electronic record of Specifications and Addenda to identify products provided in PDF format.
1. Reference the Product Data number, Shop Drawing number, and O&M manual number for each product and item of equipment furnished or installed.
2. Reference Modifications by type and number for all changes.

D. Maintain an electronic record of Drawings in PDF format.
1. Reference the Product Data number, Shop Drawing number, and O&M manual number for each product and item of equipment furnished or installed.
2. Reference Modifications by type and number for all changes.
3. Record information as construction is being performed. Do not conceal any Work until the required information is recorded.
4. Mark drawings to record actual construction.
    a. Depths of various elements of the foundation in relation to finished first floor datum or the top of walls.
    b. Horizontal and vertical locations of underground utilities and appurtenances constructed, and existing utilities encountered during construction.
    c. Location of utilities and appurtenances concealed in the Work. Refer measurements to permanent structures on the surface. Include the following equipment:
        1) Piping;
        2) Ductwork;
        3) Equipment and control devices requiring periodic maintenance or repair;
        4) Valves, unions, traps, and tanks;
        5) Services entrance;
        6) Feeders; and

7) Outlets.

d. Changes of dimension and detail.

e. Changes by Modifications.

f. Information in Requests for Information or included in the Decision Register.

g. Details not on the original Drawings. Include field verified dimensions and clarifications, interpretations, and additional information issued in response to Requests for Information.

5. Mark Drawings with the following colors:

a. Highlight references to other documents, including Modifications in blue.

b. Highlight mark ups for new or revised Work (lines added) in yellow.

c. Highlight items deleted or not installed (lines to be removed) in red.

d. Highlight items constructed per the Contract Documents in green.

6. Submit Record Documents to Construction Manager for review and acceptance 30 days prior to Final Completion of the Project.

E. Applications for Payment will not be recommended for payment if Record Documents are found to be incomplete or not in order. Final payment will not be recommended without complete Record Documents.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 33 00 DOCUMENT MANAGEMENT

PART 1 - GENERAL

1.01 SUMMARY

A. Submit documentation as required by the Contract Documents and as requested by the Construction Manager.

B. Use the Project Management Information System (PMIS) provided by the Construction Manager. Software for the PMIS is FNiManager has the following system requirements:

1. Operating Systems: Windows 7 or later and OS X v10.8 or later.

2. Supported Internet Browsers: Internet Explorer 11.0 or later, Google Chrome 70.0 or later, Firefox 63.0 or later, Safari 11.0 or later, and Microsoft Edge 17.0 or later.

3. Screen Resolution: The recommended screen resolution is 1280 x 1024 or higher. The minimum screen resolution required to support all features is 1024 x 768.

1.02 QUALITY ASSURANCE

Submit legible, accurate, complete documents presented in a clear, easily understood manner. Documents not meeting these criteria will be returned without review as “Not Approved.”

1.03 CONTRACTOR’S RESPONSIBILITIES

A. Review documents prior to submission. Make certifications as required by the Contract Documents and as indicated on Construction Manager provided forms.

B. Provide a Schedule of Documents to list the documents that are to be submitted, the dates on which documents are to be sent to the Construction Manager for review. Use the form provided by the Construction Manager for this list.

C. Incorporate the dates for processing documents into the Progress Schedule required by Section 01 33 05 “Construction Progress Schedule.”

1. Provide documents in accordance with the schedule so construction of the Project is not delayed.

2. Allow a reasonable time for the review of documents when preparing the Progress Schedule. Assume a 14-day review cycle for each document unless a longer period of time is indicated in the Contract Documents or agreed to by Construction Manager and Contractor.

3. Schedule delivery of review documents to provide all information for interrelated Work at one time.

4. Allow adequate time for processing documents so construction of the Project is not delayed.

1.04 FORMS AND WORKFLOWS

Use the forms or workflow process provided by the Construction Manager for project documentation.

1.05 DOCUMENT PREPARATION AND DELIVERY PROCEDURES

A. Deliver documents in electronic format as directed by the Construction Manager.

1. Do not leave any blanks incomplete. If information is not applicable, enter NA in the space provided.

2. Deliver all documents in Portable Document Format (PDF).

a. Create PDF document using Bluebeam Revu software.

b. Create PDF documents from native format files unless files are only available from scanned documents.

c. Rotate pages so that the top of each document appears at the top of the monitor screen when opened in PDF viewing software.

d. Provide PDF document with adequate resolution to allow documents to be printed in a format equivalent to the document original. Documents are to be scalable to allow printing on standard 8-1/2 x 11 or 11 x 17 paper.

e. Submit color PDF documents where color is required to interpret the document.

f. Create or convert documents to allow text to be selected for comments or searched using text search features. Run scanned documents through Optical Character Recognition (OCR) software if necessary.

g. Flatten markups in documents to prevent markups made by Contractor from being moved or deleted. Flatten documents to allow markup recovery.

h. Use Bluebeam Revu software to reduce file size using default settings except the option for “Drop Metadata”. Uncheck the “Drop Metadata” box when reducing file size.

i. Add footers to each document with the name of the Project.

B. Software Requirements:

1. OPT and Contractor will each acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the following software formats:

Document	Document Format
Email	.htm, .rtf, or .txt without formatting that impairs legibility of content on screen or in printed copies
Submittals	Bluebeam PDF
Applications for Payment	Bluebeam PDF and Microsoft® Excel
Progress Schedules	PDF and Schedule in Native Format
Layouts and drawings to be submitted to Owner for future use and modification.	Autodesk® AutoCAD .dwg format
Document submitted to OPT for future word processing use and modification.	Microsoft® Word

Document	Document Format
Spreadsheets and data submitted to OPT for future data processing use and modification.	Microsoft® Excel

2. Software will be the version currently published at the time Contract is signed, unless a specific software version in listed in the Supplementary Conditions. Prior to using any updated version of the software required in this Section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or convert to comply with this Paragraph 1.05.B.

1.06 DOCUMENTATION

Furnish documents as indicated in the individual Specification Sections. Submit documents per the procedures described in the Contract Documents.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 33 02 SHOP DRAWINGS

PART 1 - GENERAL

1.01 SUMMARY

A. Shop Drawings are required for those products that cannot adequately be described in the Contract Documents to allow fabrication, erection, or installation of the product without additional detailed information from the Supplier.

B. Submit Shop Drawings as required by the Contract Documents and as reasonably requested by the Construction Manager to:

1. Record the products incorporated into the Project;

2. Provide detailed information for the products proposed for the Project regarding their fabrication, installation, commissioning, and testing; and

3. Allow the Design Professional to advise the Owner if products proposed for the Project by the Contractor conform, in general, to the design concepts of the Contract Documents.

C. Contractor's responsibility for full compliance with the Contract Documents is not relieved by the review of Shop Drawings, Samples, or mockups.

D. Submit a Change Proposal per Section 01 26 00 "Change Management" to request modifications to the Contract Documents, including those for approval of "or equal" products when specifically allowed by the Contract Documents or as a substitution for specified products or procedures. Deviations from the Contract Documents can only be approved Change Order or Field Order.

1.02 QUALITY ASSURANCE

A. Submit legible, accurate, and complete documents presented in a clear, easily understood manner. Shop Drawings not meeting these criteria will not be approved.

B. Demonstrate that the proposed products are in full compliance with the design criteria and requirements of the Contract Documents, or will be if deviations requested per Paragraph 1.10 are approved.

C. Furnish and install products that fully comply with the information included in the Shop Drawings.

1.03 CONTRACTOR'S RESPONSIBILITIES

A. Furnish Shop Drawings for products as indicated in the individual Specification Sections.

B. Include Shop Drawings in the Document Register required by Section 01 33 00 "Document Management" to indicate the Shop Drawings to be submitted, the dates on which Shop Drawings are to be sent to the Construction Manager for review, and proposed dates that the product will be incorporated into the Project.

C. Incorporate the dates for processing Shop Drawings into the Progress Schedule required by Section 01 33 05 "Construction Progress Schedule."

1. Submit Shop Drawings in accordance with the schedule so construction of the Project is not delayed.
2. Submit Shop Drawings for interrelated Work at one time.
3. Allow adequate time for ordering, fabricating, delivering, and installing products so construction of the Project is not delayed.

D. Complete the following before submitting a Shop Drawing or Sample:

1. Prepare and review the Shop Drawing or Sample. Coordinate the Shop Drawing or Sample with other Shop Drawings and Samples, with the requirements of the Work, and the Contract Documents;
2. Determine and verify specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to Shop Drawings and Samples;
3. Determine and verify the suitability of materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
4. Determine and verify information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

E. Determine and verify:

1. Field measurements, quantities, and dimensions are shown on the Shop Drawing and are accurate;
2. Location of existing structures, utilities, and equipment related to the Shop Drawing have been shown and conflicts between the products, existing structures, utilities, and equipment have been identified;
3. Conflicts that impact the installation of the products have been brought to the attention of the Construction Manager;
4. Shop Drawing is complete for its intended purpose; and
5. Conflicts between the Shop Drawing related to the various Subcontractors and Suppliers have been resolved.

F. Review Shop Drawings prior to submitting to the Construction Manager. Certify that all Shop Drawings have been reviewed by the Contractor and are in strict conformance with the Contract Documents as modified by Addenda, Change Order, Field Order, or Contract Amendment when submitting Shop Drawings except for deviations specifically brought to the Construction Manager's attention on an attached Shop Drawing Deviation Request form in accordance with Paragraph 1.10.

G. Fabrication or installation of any products prior to the approval of Shop Drawings is done at the Contractor's risk. Defective products may be rejected at the Owner's option.

H. Payment will not be made for products for which Shop Drawings or Samples are required until these are approved by the Construction Manager and Design Professional.

1.04 DOCUMENTATION

A. Provide adequate information in Shop Drawings and with Samples so the Design Professional can:

1. Assist the Owner in selecting colors, textures, or other aesthetic features.

2. Compare the proposed features of the product with the specified features and advise Owner that the product does, in general, conform to the Contract Documents.

3. Compare the performance features of the proposed product with those specified and advise the Owner that the product does, in general, conform to the performance criteria specified in the Contract Documents.

4. Review required certifications, guarantees, warranties, and service agreements for compliance with the Contract Documents.

B. Include a complete description of the material or equipment to be furnished, including:

1. Type, dimensions, size, arrangement, model number, and operational parameters of the components;

2. Weights, gauges, materials of construction, external connections, anchors, and supports required;

3. Performance characteristics, capacities, engineering data, motor curves, and other information necessary to allow a complete evaluation of mechanical components;

4. All applicable standards;

5. Fabrication and installation drawings, setting diagrams, manufacturing instructions, templates, patterns, and coordination drawings;

6. Wiring and piping diagrams and related controls;

7. Mix designs for concrete, asphalt, or other materials proportioned for the Project; and

8. Complete and accurate field measurements for products which must fit existing conditions. Indicate on the document that the measurements represent actual dimensions obtained at the Site.

C. Submit Shop Drawings that require coordination with other Shop Drawings for fabrication at the same time. Shop Drawings requiring coordination with other Shop Drawings will not be approved until a complete package is submitted, unless approved by the Construction Manager.

D. Submit information for all of the components and related equipment required for a complete and operational system in one Submittal.

1. Include electrical, mechanical, and other information required to indicate how the various components of the system function together as a system.

2. Provide certifications, warranties, and written guarantees and service contracts with the document package for review when these are required.

1.05 SPECIAL CERTIFICATIONS AND REPORTS

A. Provide all required special certifications, reports, and other documentation with the Shop Drawings as specified in the individual Specification Sections which may include:

1. Certified Test Reports (CTR): A report prepared by an approved testing agency giving results of tests performed on products to indicate their compliance with the Specifications. This report is to demonstrate that the product, when installed, will meet the requirements of the Contract Documents and is part of the Shop Drawing. Field tests may be performed by the Owner to determine that in place materials or products meet the same quality as indicated in the CTR submitted as part of the Shop Drawing.

2. Certification of Local Field Service (CLS): A certified letter stating that field service is available from a factory or supplier approved service organization located within a 300-mile radius of the Site. Include the names, addresses, and telephone numbers of approved service organizations with the certificate.

3. Certification of Adequacy of Design (CAD): A certified letter from the manufacturer of the equipment stating that the equipment has been designed to be structurally stable and to withstand all imposed loads without deformation, failure, or adverse effects to the performance and operational requirements of the unit. The letter must state that mechanical and electrical components have been adequately sized to be fully operational for the conditions specified or normally encountered by the product's intended use.

4. Certification of Applicator/Subcontractor (CSQ): A certified letter stating that the applicator or subcontractor proposed to perform a specified function is duly designated as factory authorized and trained for the application of the specified product.

1.06 WARRANTIES AND GUARANTEES

A. Provide all required warranties, guarantees, and related documents with the Shop Drawing. The effective date of warranties and guarantees will be the date of Substantial Completion.

B. Identify all extended warranties which are defined as any guarantee of performance for the product or system beyond the one-year correction period described in the General Conditions. Issue the warranty certificate in the name of the Owner. Provide a warranty bond for extended warranties if required by the individual Specification Sections.

C. Include an additional copy of equipment warranties in operation and maintenance manuals.

D. Provide a copy of all warranties in a separate document in accordance with Section 01 70 00 "Execution and Closeout Requirements."

1.07 EXTENDED SERVICE AGREEMENTS

A. Provide Extended Service Agreements and related documents with the Product Data. An Extended Service Agreement is a contract between the Owner and an approved Subcontractor or Supplier to provide service and or maintenance beyond that required to

fulfill requirements for warranty repairs, or to perform routine maintenance for a definite period beyond the one-year correction period specified in the General Conditions.

B. An Extended Service Agreement does not relieve the Contractor from obligations under the one-year correction period or warranty provisions specified in the General Conditions

C. An Extended Service Agreement does not relieve the Contractor from obligations under the maintenance bond, if a maintenance bond is required by the Contract.

D. Requirements for the Extended Service Agreement are described in the Specification Sections for each piece of equipment or system requiring an Extended Service Agreement.

E. Enter into a contract with the service provider and assign the service contract to the Owner on the date Substantial Completion. Once assigned to the Owner, Contract requirements for the Extended Service Agreement will be complete and will not extend the Contract between the Owner and Contractor.

F. Owner may require that a performance bond be provided for the Extended Service Agreement. Provide a separate bond meeting the same requirements as those for the Contractor's performance bond if required. The bond will be in the amount of the Extended Service Agreement.

G. Include an additional copy of Extended Service Agreements in operation and maintenance manuals.

H. Provide a copy of Extended Service Agreements in a separate document in accordance with Section 01 70 00 "Execution and Closeout Requirements."

1.08 SHOP DRAWING SUBMITTAL PROCEDURES

A. Submit Shop Drawings to the Construction Manager. Send all documents in digital format for processing.

1. Provide all information requested. Do not leave any blanks incomplete. If information is not applicable, enter NA in the space provided.

2. Submit all documents in Portable Document Format (PDF) as required by Section 01 33 00 "Document Management." Provide color PDF documents where color is required to interpret the Shop Drawing. Provide Samples and color charts per Paragraph **[1.10]**.

3. Submit each specific product, class of material, or equipment system separately so these can be tracked and processed independently. Do not submit Shop Drawings for more than one independent system in the same Submittal.

4. Submit items specified in different Specification Sections separately unless they are part of an integrated system.

5. Define abbreviations and symbols used in Shop Drawings.

a. Use terms and symbols in Shop Drawings consistent with the Contract Drawings.

b. Provide a list of abbreviations and their meaning as used in the Shop Drawings.

c. Provide a legend for symbols used on Shop Drawings.

6. Mark Shop Drawings to reference:
    a. Related Specification Sections;
    b. Drawing number and detail designation;
    c. Equipment designation or name;
    d. Schedule references;
    e. System into which the product is incorporated; and
    f. Location where the product is incorporated into the Project.

B. Use the following conventions to markup Shop Drawings for review:
    1. Make comments and corrections in the color blue. Add explanatory comments to the markup.
    2. Highlight items in black (redact) that are not being furnished when the Supplier's standard drawings or information sheets are provided so that only the products to be provided are in their original color.
    3. Make comments in yellow where selections or decisions by the Design Professional are required, but such selections do not constitute a deviation from the Contract Documents. Add explanatory comments to the markup to indicate the action requested of the Design Professional.
    4. Make comments in orange that are deviation requests. Include the deviation request number on the Shop Drawing that corresponds to the deviation request on the Shop Drawing Deviation Request form. Include explanatory comments in the Shop Drawing Deviation Request form.
    5. Mark dimensions with the prefix "FD" to indicate field verified dimensions on the Shop Drawings.

C. Designate a document as requiring priority treatment to place the review of the Shop Drawing ahead of other Shop Drawings previously delivered. Shop Drawings are typically reviewed in the order received, unless Contractor requests that a different priority be assigned. Priority Shop Drawings will be reviewed before other Shop Drawings already received but not yet reviewed. Use of this priority designation for Shop Drawings may delay the review of Shop Drawings previously submitted. Contractor is responsible for delays resulting from the use of the priority designation status on Shop Drawings.

D. Complete the certification required by Paragraph 1.03.G.

1.09 SAMPLE AND MOCKUP SUBMITTAL PROCEDURES

A. Submit color charts and Samples for every product requiring color, texture, or finish selection.
    1. Submit color charts and Samples only after Shop Drawings for the products have been approved.
    2. Deliver all color charts and Samples at one time.
    3. Provide Samples of adequate size to clearly illustrate the functional characteristics of the product, with integrally related parts and attachment devices.

4. Indicate the full range of color, texture, and patterns.
5. Deliver color charts and Samples to the field office and store for the duration of the Project.
6. Notify the Construction Manager that color charts and Samples have been delivered for approval using the Notification by Contractor form.
7. Submit color charts and Samples not less than 30 days prior to when these products are to be ordered or released for fabrication to comply with the Project schedule.
8. Remove Samples that have not been approved. Submit new Samples following the same process as for the initial Sample until Samples are approved.
9. Dispose of Samples when related Work has been completed and approved and disposal is approved by the Construction Manager. At Owner's option, Samples will become the property of the Owner.

B. Construct mockups for comparison with the Work being performed.

1. Construct mockups from the actual products to be used in construction per the detailed specifications.
2. Construct mockups of the size and in the area indicated in the Contract Documents.
3. Construct mockups complete with texture and finish to represent the finished product.
4. Notify the Construction Manager that mockups have been constructed and are ready for approval using the Notification by Contractor form. Allow 2 weeks for Construction Manager to approve of the mockup before beginning the Work represented by the mockup.
5. Remove mockups that have not been approved. Construct new mockups following the same process as for the initial mockup until mockup is approved.
6. Protect mockups until Work has been completed and accepted by the Construction Manager.
7. Dispose of mockups when related Work has been completed and disposal is approved by the Construction Manager.

1.10 REQUESTS FOR DEVIATION

A. Submit a Change Proposal per Section 01 26 00 "Change Management" to request modifications to the Contract Documents, including those for approval of "or equal" products when specifically allowed by the Contract Documents or as a substitution for specified products or procedures.

B. Provide a Shop Drawing with the Change Proposal that clearly identifies deviations for any product or component of the product that does not fully comply with the Contract Documents using the Shop Drawing Deviation Request form provided by the Construction Manager. Mark deviations on the Shop Drawing per Paragraph 1.09.B

C. Include a description of why the deviation is required and the impact on Contract Price or Contract Times. Include the amount of any cost savings to the Owner for deviations that result in a reduction in cost.

D. Identify each deviation request as a separate item. Include all requested deviations that must be approved as a group together and identify them as a single item.

E. Construction Manager will issue a Field Order or Change Order to approve acceptable deviations. Approval of a requested Shop Drawing deviation by the Design Professional on the Shop Drawings Deviation Request form indicates approval of the requested deviation only on its technical merits as generally conforming to the Contract Documents. Deviations from the Contract Documents can only be approved by a Modification issued by the Construction Manager.

1.11 CONSTRUCTION MANAGER AND DESIGN PROFESSIONAL RESPONSIBILITIES

A. Shop Drawings will be received by the Construction Manager. Construction Manager will log the documents and forward to the Design Professional for review per this Section for general conformance with the Contract Documents.

1. Design Professional's review and approval will be only to determine if the products described in the Shop Drawing or Sample will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Design Professional's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.

3. Design Professional's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

B. Comments will be made on items called to the attention of the Design Professional for review and comment. Any marks made by the Design Professional do not constitute a blanket review of the document or relieve the Contractor from responsibility for errors or deviations from the Contract requirements.

1. Design Professional will respond to Contractor's markups by either making markups directly in the Shop Drawing file using the color red or by attaching a Document Review Comments form with review comments keyed to the Drawings or Shop Drawing Deviation Request.

2. Shop Drawings that are reviewed will be returned with one or more of the following status designations:

a. Approved: Shop Drawing is found to be acceptable as submitted.

b. Approved as Noted: Shop Drawing is approved so long as corrections or notations made by Design Professional are incorporated into the Shop Drawing.

c. Not Approved: Shop Drawing or products described are not acceptable.

d. Cancelled: This action indicates that for some reason, the Shop Drawing is to be removed from consideration and all efforts regarding the processing of that document are to cease.

3. Shop Drawings will also be designated for one of the following actions:

    a. Documents Filed: Shop Drawing is acceptable without further action and has been filed as a record document.

    b. Shop Drawing Not Required: A Shop Drawing was not required by the Contract Documents. Resubmit the document per Section 01 33 03 “Product Data.”

    c. Cancelled: This action indicates that for some reason, the Shop Drawing is to be removed from consideration and all efforts regarding the processing of that document are to cease.

    d. Revise and Resubmit: Shop Drawing has deviations from the Contract Documents, significant errors, or is inadequate and must be revised and resubmitted for subsequent review.

    Actions “a” through “c” will close out the Shop Drawing review process and no further action is required as a Shop Drawing. Action “d” requires follow up action to close out the review process.

4. Drawings with a significant or substantial number of markings by the Contractor may be marked “Approved as Noted.” These drawings are to be revised to provide a clean record of the document. Proceed with ordering products as the documents are revised.

5. Dimensions or other data that do not appear to conform to the Contract Documents will be marked as “At Variance With” (AVW) the Contract Documents or other information provided. The Contractor is to make revisions as appropriate to comply with the Contract Documents.

C. Bring deviations to the Shop Drawings to the attention of the Design Professional for approval by using the Shop Drawing Deviation Request form. Use a single line for each requested deviation so the Status and Action for each deviation can be determined for that requested deviation. If approval or rejection of a requested deviation will impact other requested deviation, then all related deviations should be included in that requested deviation line so the status and action can be determined on the requested deviation as a whole.

D. Requested deviations will be reviewed as a possible Modification to the Contract Documents.

1. A requested deviation will be marked as “Not Approved” if the requested deviation is unacceptable. Contractor is to revise and resubmit the Shop Drawing with corrections for approval.

2. A Field Order will be issued by the Construction Manager for deviations approved by the Design Professional if the requested deviation is acceptable and if the requested deviation will not result in a change in Contract Price or Contract Times. Requested deviations from the Contract Documents may only be approved by Field Order.

3. A requested deviation will not be approved if the requested deviation is acceptable but the requested deviation will or should result in a change in Contract Price or Contract Times. Submit any requested deviation that requires a change in Contract

Price or Contract Times as a Change Proposal for approval prior to resubmitting the Shop Drawing.

E. Contractor is to resubmit a complete Shop Drawing incorporating revisions until it is acceptable and marked “Approved” or “Approved as Noted” and is assigned an action per Paragraph 1.11.B.3 that indicates that the Shop Drawing process is closed.

F. Information that is submitted as a Shop Drawing that should be submitted as Product Data or other type of document, or is not required may be returned without review, or may be deleted. No further action is required and the Shop Drawing process for this document will be closed.

1.12 RESUBMISSION REQUIREMENTS

A. Make all corrections or changes required by the Design Professional in the document and resubmit to the Construction Manager until approved.

B. Resubmit a complete Shop Drawing for each resubmittal. The last approved Shop Drawing must not rely on previous submissions. The final Shop Drawing is to provide a complete record for the Owner’s records.

C. Revise initial drawings or data and resubmit as specified for the reviewed document.

1. Highlight or cloud in green those revisions which have been made in response to the previous reviews by the Design Professional. This will include changes previously highlighted or clouded in yellow to direct attention to Design Professional to items requiring selections, decisions by the Design Professional or highlighted or clouded in orange for a requested deviation from the Contract Documents, or comments in red made by the Construction Manager.

2. Highlight and cloud new items in yellow where selections or decisions by the Design Professional are required, but such selections do not constitute a deviation from the Contract Documents. Add explanatory comments to the markup to indicate the action to be taken by the Design Professional.

3. Highlight and cloud new items in orange that are deviation requests. Include the deviation request number on the Shop Drawing that corresponds to the deviation request on the Shop Drawing Deviation Request form. Numbering for these new items is to start with the next number following the last Shop Drawing deviation requested. Include explanatory comments in the Shop Drawing Deviation Request form.

D. Pay for excessive review of Shop Drawings.

1. Excessive review of Shop Drawings is defined as any review required after the original review has been made and the first resubmittal has been checked to see that corrections have been made.

2. Review of Shop Drawings or Samples will be an additional service requiring payment by the Contractor if the Contractor submits a substitution for a product for which a Shop Drawing or Sample has previously been approved, unless the need for such change is beyond the control of Contractor.

3. Cost for additional review time will be billed to the Owner by the Design Professional for the actual hours required for the review of Shop Drawings by Design Professional

and in accordance with the rates listed in Section 00 73 00 “Supplementary Conditions.”

4. A set-off will be included in each Application for Payment to pay the cost for the additional review. The set-off will be based on invoices submitted to the Owner for these services.
5. Need for more than one resubmission or any other delay in obtaining Design Professional’s approval of Shop Drawings will not entitle the Contractor to an adjustment in Contract Price or an extension of Contract Times.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 33 03 PRODUCT DATA

PART 1 - GENERAL

1.01 SUMMARY

A. Submit Product Data as required by the Contract Documents and as reasonably requested by the Construction Manager. Provide Product Data for all products unless a Shop Drawing is required for the same item.

B. Submit Product Data to provide documents that allow the Owner to:

1. Record the products incorporated into the Project;

2. Record detailed information about products regarding their fabrication, installation, commissioning, and testing; and

3. Provide replacement or repair of products at some future date.

C. Contractor's responsibility for full compliance with the Contract Documents is not relieved by the receipt or cursory review of Product Data.

D. Submit a Change Proposal per Section 01 26 00 "Change Management" to request modifications to the Contract Documents, including those for approval of "or equal" products when specifically allowed by the Contract Documents or as a substitution for specified products or procedures. Deviations from the Contract Documents can only be made by an approved Change Order or Field Order.

1.02 QUALITY ASSURANCE

A. Submit legible, accurate, and complete documents presented in a clear, easily understood manner. Product Data not meeting these criteria will not be accepted and must be resubmitted.

1.03 CONTRACTOR'S RESPONSIBILITIES

A. Furnish Product Data for products as indicated in the individual Specification Sections.

B. Include Product Data in the Document Register required by Section 01 33 00 "Document Management" to indicate the Product Data to be submitted, the dates on which documents are to be sent to the Construction Manager for review, and proposed dates that the product will be incorporated into the Project.

C. Complete the following before submitting Product Data:

1. Prepare Product Data and coordinate with Shop Drawings, Samples, Product Data for related products, and with the requirements of the Contract Documents;

2. Determine and verify specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information;

3. Determine and verify the suitability of materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

4. Determine and verify information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

D. Determine and verify:

1. Field measurements, quantities, and dimensions are shown on the Product Data and are accurate;

2. Location of existing structures, utilities, and equipment related to the Product Data have been shown and conflicts between the products, existing structures, utilities, and equipment have been brought to the attention of the Construction Manager;

3. Conflicts that impact the installation of the products have been brought to the attention of the Construction Manager;

4. Product Data is complete for its intended purpose; and

5. Conflicts between the Product Data related to the various Subcontractors and Suppliers have been resolved.

E. Review Product Data prior to submitting to the Construction Manager. Certify that all Product Data has been reviewed by the Contractor and is in strict conformance with the Contract Documents as modified by Addenda, Change Order, Field Order, or Contract Amendment when submitting Product Data.

1.04 DOCUMENTATION

A. Include a complete description of the material or equipment to be furnished, including:

1. Type, dimensions, size, arrangement, model number, and operational parameters of the components;

2. Weights, gauges, materials of construction, external connections, anchors, and supports required;

3. Performance characteristics, capacities, engineering data, motor curves, and other information necessary to allow a complete evaluation of mechanical components;

4. All applicable standards;

5. Fabrication and installation drawings, setting diagrams, manufacturing instructions, templates, patterns, and coordination drawings;

6. Wiring and piping diagrams and related controls;

7. Mix designs for concrete, asphalt, or other materials proportioned for the Project; and

8. Complete and accurate field measurements for products which must fit existing conditions. Indicate on the document that the measurements represent actual dimensions obtained at the Site.

B. Submit information for all components and related equipment required for a complete and operational system in one submittal.

1. Include electrical, mechanical, and other information required to indicate how the various components of the system function together as a system.

2. Provide certifications, warranties, and written guarantees and service contracts with the document package for review when these are required.

1.05 SPECIAL CERTIFICATIONS AND REPORTS

A. Provide all required certifications with the Product Data as specified in the individual Specification Sections:

1. Certified Test Reports (CTR): A report prepared by an approved testing agency giving results of tests performed on products to indicate their compliance with the Specifications. This report is to demonstrate that the product when installed will meet the requirements of the Contract Documents and is part of the Product Data. Field tests may be performed by the Owner to determine that in place materials or products meet the same quality as indicated in the CTR submitted as part of the Product Data.

2. Certification of Local Field Service (CLS): A certified letter stating that field service is available from a factory or supplier approved service organization located within a 300-mile radius of the Site. Include the names, addresses, and telephone numbers of approved service organizations with the certificate.

3. Certification of Adequacy of Design (CAD): A certified letter from the manufacturer of the equipment stating that the equipment has been designed to be structurally stable and to withstand all imposed loads without deformation, failure, or adverse effects to the performance and operational requirements of the unit. The letter must state that mechanical and electrical components have been adequately sized to be fully operational for the conditions specified or normally encountered by the product's intended use.

4. Certification of Applicator/Subcontractor (CSQ): A certified letter stating that the applicator or subcontractor proposed to perform a specified function is duly designated as factory authorized and trained for the application of the specified product.

1.06 WARRANTIES AND GUARANTEES

A. Provide all required warranties, guarantees, and related documents with the Product Data. The effective date of warranties and guarantees will be the date of Substantial Completion.

B. Identify all Extended Warranties which are defined as any guarantee of performance for the product or system beyond the one-year correction period described in the General Conditions. Issue the warranty certificate in the name of the Owner. Provide a warranty bond for extended warranties if required by Specification Sections.

C. Include an additional copy of equipment warranties in operation and maintenance manuals.

D. Provide a copy of all warranties in a separate document in accordance with Section 01 70 00 "Execution and Closeout Requirements."

1.07 EXTENDED SERVICE AGREEMENTS

A. Provide Extended Service Agreements and related documents with the Product Data. An Extended Service Agreement is a contract between the Owner and an approved

Subcontractor or Supplier to provide service and or maintenance beyond that required to fulfill requirements for warranty repairs, or to perform routine maintenance for a definite period beyond the one-year correction period specified in the General Conditions.

B. An Extended Service Agreement does not relieve the Contractor from obligations under the one-year correction period or Warranty provisions specified in the General Conditions

C. An Extended Service Agreement does not relieve the Contractor from obligations under the maintenance bond, if a maintenance bond is required by the Contract.

D. Requirements for the Extended Service Agreement are described in the Specification Sections for each piece of equipment or system requiring an Extended Service Agreement.

E. Enter into a contract with the service provider and assign the service contract to the Owner on the date of Substantial Completion. Once assigned to the Owner, Contract requirements for the Extended Service Agreement will be complete and will not extend the Contract between the Owner and Contractor.

F. Owner may require that a performance bond be provided for the Extended Service Agreement. Provide a separate bond meeting the same requirements as those for the Contractor's performance bond if required. The bond will be in the amount of the Extended Service Agreement.

G. Include an additional copy of Extended Service Agreements in operation and maintenance manuals.

H. Provide a copy of Extended Service Agreements in a separate document in accordance with Section 01 70 00 "Execution and Closeout Requirements."

1.08 PRODUCT DATA SUBMITTAL PROCEDURES

A. Submit Product Data to the Construction Manager. Send all documents in digital format for processing.

1. Provide all information requested. Do not leave any blanks incomplete. If information is not applicable, enter NA in the space provided.

2. Submit all documents in Portable Document Format (PDF) as required by Section 01 33 00 "Document Management." Provide color PDF documents where color is required to interpret the Product Data.

3. Submit each specific product, class of material, or equipment system separately so these can be tracked and processed independently. Do not submit Product Data for more than one system in the same Submittal.

4. Submit items specified in different Specification Sections separately unless they are part of an integrated system.

5. Define abbreviations and symbols used in Product Data.

a. Use terms and symbols in Product Data consistent with the Contract Drawings.

b. Provide a list of abbreviations and their meaning as used in the Product Data.

c. Provide a legend for symbols used on Product Data.

6. Mark Product Data to reference:
    a. Related Specification Sections;
    b. Drawing number and detail designation;
    c. Equipment designation or name;
    d. Schedule references;
    e. System into which the product is incorporated; and
    f. Location where the product is incorporated into the Project.

B. Complete the certification required by Paragraph 1.03.F.

1.09 CONSTRUCTION MANAGER AND DESIGN PROFESSIONAL RESPONSIBILITIES

A. Product Data will be received by the Construction Manager, logged, and provided to Owner as the Project record.
    1. Product Data may be reviewed to see that the information provided is adequate for the purpose intended. Product Data not meeting the requirements of Paragraph 1.02 may not be approved.
    2. Product Data is not reviewed for compliance with the Contract Documents. Comments may be returned if deviations from the Contract Documents are noted during the cursory review performed to see that the information is adequate.
    3. Contractor's responsibility for full compliance with the Contract Documents is not relieved by the review of Product Data. Contract modifications can only be approved by a Change Order or Field Order.

B. Construction Manager may take the following action in processing Product Data:
    1. File Product Data as received if the cursory review indicates that the document meets the requirements of Paragraph 1.02. Document will be marked "Filed as Received" and "Documents Filed." No further action is required on that Product Data.
    2. Not approve the Product Data for one of the following reasons:
        a. The documentation requirements of the Contract Documents indicate that the document submitted as Product Data should have been submitted as a Shop Drawing. The Product Data will be marked "Not Approved" and "Submit as Shop Drawing". No further action is required on this document as Product Data and the Product Data process will be closed. Resubmit the document as a Shop Drawing per Section 01 33 02 "Shop Drawings."
        b. The cursory review indicates that the document does not meet the requirements of Paragraph 1.02. The Product Data will be marked "Not Approved" and "Revise and Resubmit". Contractor is to resubmit the Product Data until it is acceptable and marked "Filed as Received". When Product Data is filed, no further action is required and the Product Data process will be closed.
        c. The Product Data is not required by the Contract Documents nor is applicable to the Project. The Product Data will be marked "Not Approved" and "Cancelled." No further action is required and the Product Data process will be closed.

C. Contractor is to resubmit the Product Data until it is acceptable and marked “Filed as Received”.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 33 04 OPERATION AND MAINTENANCE DATA

PART 1 - GENERAL

1.01 SUMMARY

A. Prepare a complete and detailed operation and maintenance manual (manual) for each type and model of equipment or product furnished and installed under this Contract.

B. Prepare manuals in the form of an instruction manual for the Owner. The manuals are to be suitable for use in providing the operation and maintenance instructions required by Section 01 79 00 “Training of Operation and Maintenance Personnel.”

C. Provide complete and detailed information specifically for the products or systems provided for this Project. Include the information required to operate and maintain the product or system.

D. Manuals are to be provided in addition to any information packed with or attached to the product when delivered. Remove information packed with or attached to the product and include this information as an attachment to the manual.

E. Include cost for manuals provided by Suppliers and Subcontractors as described in this Section in the Cost of Work for that equipment item.

1.02 DOCUMENTATION

A. Submit manuals in accordance with Section 01 33 00 “Document Management.” Attach a copy of the Operation and Maintenance Manual Review Report form provided by the Construction Manager to each manual with pertinent information completed.

B. Provide one preliminary electronic copy of the manual to the Construction Manager for review within 15 days after review of any equipment submittal by the OPT.

C. Provide one electronic copy and three printed copies of the final manual after:

1. Preliminary manuals have been approved;

2. Field test records have been incorporated into the manual; and

3. Record Documents per Section 01 31 13 “Project Coordination” have been approved and have been incorporated in the final manual.

D. Provide copies of the manufacturer’s warranties, guarantees, or service agreements in accordance with Section 01 70 00 “Execution and Closeout Requirements.”

PART 2 - PRODUCTS

2.01 MATERIALS

A. Provide digital files for each manual as specified in Paragraph 2.02.

1. Use filenames that correspond to the equipment designation shown in the Contract Documents or other equipment designations provided by the OPT.

2. Submit a preliminary version of the electronic manual for review. Provide a final version of the manual incorporating OPT’s comments.

B. Provide printed copies of each manual as specified in Paragraph 2.03.

2.02 ELECTRONIC MANUAL FORMAT

A. Manual contents are to be submitted in electronic format to the Construction Manager.

B. Provide individual electronic files for each manual.

1. Maximum file size is 75 MB. If manual is greater than maximum allowable file size, provide individual files for each major section of manual.

2. Acceptable file types for written documents are Portable Document File (PDF) or provide manual text in Microsoft Word. Provide drawings in native format and PDF format. All files must be compatible with the latest software version available.

3. Filename must identify the equipment location, equipment manufacturer, and date equipment placed in service, e.g. JCC1-Pump Room-Manufacturer-200503.pdf.

4. Each electronic file must contain a table of contents at the beginning of the file which includes hypertext links or bookmarks to navigate the file contents per section/chapter.

5. Scanned images of written documents are not acceptable. Document must allow character selection. Text within a file must be transferable to other documents.

6. Drawing files must have the ability to turn on/off drawing layers within the file.

2.03 PRINTED MANUAL FORMAT

A. Printed copies of each manual are to be submitted as follows:

1. Print manuals on heavy, first quality 8-1/2 x 11 paper.

a. Reduce drawings and diagrams to 8-1/2 x 11 paper size.

b. When reduction is not practical, fold drawings and place each separately in a clear, super heavy weight, top loading polypropylene sheet protector designed for three-ring binder use. Provide a typed identification label on each sheet protector.

c. Punch paper for standard three-ring binders.

2. Place manuals in heavy duty presentation, d-ring binders with clear front, back, and spine covers.

3. Identify each manual by placing a printed cover sheet in the front cover of the binder and as the first page in the manual. The first page is to be placed in a clear polypropylene sheet protector. The information on first page and the cover page are to include:

a. Name of Owner;

b. Project name;

c. Volume number; and

d. Table of contents.

4. Insert the name of the Project and volume number into the spine covers.

5. Sheet lifters are to be provided.
6. Minimum size is 2-inch capacity. Maximum size is 3-inch capacity. Fill binders to only three-fourths of its indicated capacity to allow for addition of materials to each binder by the Owner.
7. Provide index tabs for each section of the manual. Indexes are to be constructed of heavy-duty paper with a reinforced binding edge. The designation on each index tab is to correspond to the number and letter assigned in the Table of Contents.
8. Manuals for several products or systems may be provided in the same binder. Correlate the data into related groups when multiple products or systems are included in the same binder.
    a. Sections for each product or system must be included in the same binder.
    b. Sections must be in numerical order from volume to volume.

PART 3 - EXECUTION

3.01 MANUAL ORGANIZATION AND CONTENTS

A. Provide a table of contents listing each section of the manual for each product or system.
    1. Assign a number and letter to each section in the manual.
        a. The number is to correspond to the Owner's equipment numbering system or other system designated in the Contract Documents.
        b. The letter assigned will represent the part of the manual, consistent with the manual contents as required by this Section.
    2. Identify each product or system using the nomenclature shown in the Contract Documents. Provide a cross reference to the Owner's numbering system and designations for equipment indicated in the Contract Documents if these are different.
B. Include only the information that pertains to the product described. Annotate each sheet to:
    1. Clearly identify the specific product or component installed;
    2. Clearly identify the data applicable to the installation; and
    3. Delete or strike through references to inapplicable information.
C. Supplement manual information with drawings as necessary to clearly illustrate relations of component parts of equipment and systems, and control and flow diagrams.
D. Manuals for several products or systems may be provided in the same binder.
E. Fill binders to only three-fourths of its indicated capacity to allow for addition of information by the Owner.

3.02 EQUIPMENT AND SYSTEMS MANUAL CONTENT

A. Provide the following information in the first tabbed section of each manual:
    1. A description of the unit and component parts and how it functions.

2. Operating instructions for pre-startup, startup, normal operations, regulation, control, shutdown, emergency conditions, and limiting operating conditions.

3. The sequence of operation by the controls manufacturer. Provide control diagrams by the manufacturer, modified to reflect the as-built, as-installed condition.

4. Include general assembly contract drawings, sections, and photographic views as necessary to completely depict and properly identify the equipment. Indicate the dimensions, weight, capacity, and design conditions for the equipment.

B. Include detailed information to allow for the proper installation, calibration, testing, preventative, and corrective maintenance procedures in the second section of the manual or of each section of the manual information if the manual covers a multi-component equipment system. This information should include the following:

1. Maintenance instructions including assembly, installation, alignment, clearances, tolerances, and interfacing equipment requirements, adjustment, and checking instructions. Include any special rigging required to place the equipment into place, and any special test equipment required to place the equipment in service.

2. A safety subsection which addresses all safety and tag-out procedures necessary to safely operate and maintain the equipment.

3. Lubrication schedule and lubrication procedures. Include a cross reference for recommended lubrication products.

4. Troubleshooting guide.

5. A table showing the schedule of routine maintenance requirements and seasonal work which is not performed at a set frequency. Preventative maintenance tasking must address:

    a. Daily/weekly inspections performed by operations personnel;

    b. Routine preventative maintenance scheduled weekly, monthly, quarterly, semi-annually, or annually through major overhauls by maintenance personnel; and

    c. Predictive maintenance work such as alignment, analysis of the equipment, vibration, flow, oil sampling, etc.

6. Description of sequence of operation by the control manufacturer.

7. Warnings for detrimental maintenance practices.

8. Detailed corrective maintenance procedures including:

    a. Detail equipment for complete disassembly and assembly;

    b. Cross-sectional drawings or exploded views with all parts numbered to correspond with the numbers in the parts list to permit identification of the various parts;

    c. A table of normal clearances, diameters, thickness of new parts, and limits permissible for wearing parts; and

    d. List torque settings for nuts, bolts, and fasteners when critical to the equipment's performance.

C. Include all necessary diagrammatic piping and wiring diagrams and miscellaneous contract drawings and equipment in the third section of the manual or of each section of the manual if the manual covers a multi-component equipment system.

D. Provide spare parts information in the fourth section of the manual including:

1. Part numbers for ordering new parts;
2. Assembly illustrations showing an exploded view of the complex parts of the product;
3. Predicted life of parts subject to wear;
4. List of the manufacturer's recommended spare parts, current prices with effective date, and number of parts recommended for storage;
5. Directory of a local source of supply for parts with company name, address, and telephone number;
6. Complete nomenclature and list of commercial replacement parts; and
7. Complete list of spare parts, spare equipment, tools, and materials that are turned over to the Owner.

E. Provide statistical information from the original equipment manufacturer as to performance such as pump curves, flow charts insulation resistance, calibration, or test data sheets in the fifth section of the manual, including all field testing records used to verify actual performance.

F. Provide equipment name plate data installed on equipment and valves and equipment data sheets as required and furnished by the Owner in the sixth section of the manual.

G. Provide a copy of warranties and the date the warranty expires for equipment in the seventh section of the manual.

3.03 ELECTRICAL AND ELECTRONICS SYSTEMS MANUAL

A. Provide all of the information listed in Paragraph 3.02 as appropriate and include the following information:

1. Control schematics and point to point wiring diagrams prepared for field installation;
2. Circuit directories of panel boards and terminal strips and as installed color coded wiring diagrams; and
3. Other information as may be required by the individual Specification Sections.

3.04 ARCHITECTURAL PRODUCTS MANUAL

A. Provide the following information:

1. Information required for ordering replacement products;
2. Instructions for care and maintenance;
3. List of the manufacturer's recommended lubricants;
4. The manufacturer's recommendations for types of cleaning agents and methods;

5. Cautions against cleaning agents and methods that are detrimental to the product; and

6. Recommended maintenance and cleaning schedule.

B. Final balancing reports for mechanical systems.

C. Other information as may be required by the individual Specification Sections.

3.05 LIST OF SERVICE ORGANIZATIONS

A. Provide a directory of authorized service organizations with company name, address, telephone number, email address, and the contact person for warranty repair.

END OF SECTION

01 33 05 CONSTRUCTION PROGRESS SCHEDULE

PART 1 - GENERAL

1.01 SUMMARY

A. Prepare and submit a Progress Schedule for the Work and update the schedule on a monthly basis for the duration of the Project.

B. Provide Progress Schedule in adequate detail to allow Owner to monitor progress and to relate submittal processing to sequential activities of the Work.

C. Incorporate Contract Milestones into the schedule and show activities leading to achievement of these milestones.

D. Assume complete responsibility for maintaining the progress of the Work per the Progress Schedule submitted.

1.02 DOCUMENTATION

A. Submit the schedules to the Construction Manager. Send all documents in digital format for processing.

B. Do not leave any blanks incomplete. If information is not applicable, enter NA in the space provided.

C. Provide schedules, schedule updates and revisions to the Construction Manager in electronic format in its originating software and in Portable Document Format (PDF) as required by Section 01 33 00 “Document Management.”

D. Submit a preliminary Progress Schedule at the pre-construction conference.

E. Submit a detailed Progress Schedule at least 10 days prior to the first payment request.

F. Submit Progress Schedule updates monthly within 10 days after submitting Applications for Payment to indicate the progress made on the Project to the closing date for the Application for Payment. Failure to submit Progress Schedules will cause delay in the review and approval of subsequent Applications for Payment.

1.03 PROGRESS SCHEDULE REQUIREMENTS

A. Progress Schedule is to be in adequate detail to:

1. Ensure adequate planning, scheduling, and reporting during the execution of the Work;

2. Ensure the coordination of the Work of the Contractor and the various Subcontractors and Suppliers;

3. Monitor the progress of the Work; and

4. Evaluate the impact of proposed changes to the Contract Times and Project Schedule.

B. Provide personnel with 5 years’ minimum experience in scheduling construction work comparable to this Project. Prepare the Progress Schedule using acceptable scheduling software.

C. Provide the Progress Schedule in the form of a computer-generated critical path schedule which includes Work to be performed on the Project. It is intended that the Progress Schedule accomplish the following:

1. Give early warning of delays in time for correction.
2. Provide detailed plans for the execution of the Work in the form of future activities and events in sequential relationships.
3. Establish relationships of significant planned Work activities and provide a logical sequence for planned Work activities.
4. Provide continuous current status information.
5. Allow analysis of the Contractor's program for the completion of the Project.
6. Permit schedules to be revised when the existing schedule is not achievable.
7. Log the progress of the Work as it actually occurs.

D. Provide a time-scaled horizontal bar chart which indicates graphically the Work scheduled at any time during the Project. The chart is to indicate:

1. Complete sequence of construction by activity;
2. Identification of the activity by structure, location, and type of Work;
3. Chronological order of the start of each item of Work;
4. The activity start and stop dates;
5. The activity duration; and production rates used to determine the duration;
6. Successor and predecessor relationships for each activity;
7. A clearly indicated single critical path; and
8. Projected percentage of completion, based on dollar value of the Work included in each activity as of the first day of each month.

E. Provide a Progress Schedule for Submittals:

1. Indicate the specific dates each document is to be delivered to the Construction Manager.
2. Allow a reasonable time to review each document, taking into consideration the size and complexity of the document, other documents being processed, and other factors that may affect review time.
3. Include time for making revisions to the Shop Drawings and resubmitting the Shop Drawing for at least a second review.
4. Assume a 14-day review cycle for each time a Shop Drawing is submitted for review unless a longer period is indicated in the Contract Documents or provided by the Construction Manager.
5. Contractor is responsible for delays associated with additional time required to review incomplete or erroneous documents and for time lost when documents are submitted for products that do not meet specification requirements.

1.04 PROGRESS SCHEDULE REVISIONS

A. Revise the Progress Schedule if it appears that the schedule no longer represents the actual progress of the Work.

1. Submit a Plan of Action for schedule recovery if the Progress Schedule or earned value analysis indicates that the Project is more than 30 days behind schedule. The report is to include:

a. Number of days behind schedule;

b. Narrative description of the steps to be taken to bring the Project back on schedule; and

c. Anticipated time required to bring the Project back on schedule.

2. Submit a revised Progress Schedule indicating the action that the Contractor proposes to take to bring the Project back on schedule.

B. Revise the Progress Schedule to indicate any adjustments in Contract Times approved by a Modification.

1. Include a revised Progress Schedule with Change Proposals if a change in Contract Times is requested.

2. Construction Manager will deem any Change Proposal that does not have a revised Progress Schedule and request for a change in Contract Times as having no impact on the ability of the Contractor to complete the Project within the Contract Times.

C. Updating the Progress Schedule to reflect actual progress is not considered a revision to the schedule.

D. Applications for Payment will not be recommended for payment without a revised Progress Schedule and if required, the report indicating the Contractor's plan for bringing the Project back on schedule.

1.05 FLOAT TIME

A. Define float time as the amount of time between the earliest start date and the latest start date of a chain of activities on the construction schedule.

B. Float time is not for the exclusive use or benefit of either the Contractor or Owner.

C. Where several subsystems each have a critical path, the subsystem with the longest time of completion is the critical path and float time is to be assigned to other subsystems.

D. Schedule completion date must be the same as the Contract completion date. Time between the end of construction and the Contract completion date is float time.

1.06 MODIFICATION OF CONTRACT TIMES

A. Contract Times cannot be changed by the submission of a Progress Schedule. Contract Times can only be modified by a Change Order or Contract Amendment.

B. Submit a Change Proposal for any proposed change in Contract Times, and include justification for the change in accordance with the provisions of the Contract Documents.

1.07 NEAR-TERM LOOK AHEAD SCHEDULES

A. Provide a near-term look ahead schedule (NTLA Schedule) every 30 days, typically at periodic coordination meetings, using the form provided by the Construction Manager which shows the days of planned activity for the following:

   1. Submittals to be provided and day of anticipated return;

   2. Equipment and material deliveries;

   3. Arrival and departure of key construction equipment; and

   4. Activities for the Contractor and each Subcontractor.

B. Coordinate NTLA Schedule with Project Schedule. Submit a report with each NTLA Schedule identifying deviations from the Project Schedule.

C. Submit a report of near-term work planned in the previous NTLA Schedule that was delayed or not executed by marking actual activity on the previous near term look ahead schedule. Provide explanation of why planned work was not executed and plan to execute in the future and regain time lost.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 33 06 GRAPHIC DOCUMENTATION

PART 1 - GENERAL

1.01 SUMMARY

A. For Lift Station Improvements:

1. Furnish an adequate number of photographs of the Site to clearly depict the completed Project.

a. Provide aerial photographs of the completed Project from an angle and height to include the entire Site.

b. Provide a minimum of four different views.

c. Photograph a panoramic view of the entire Site.

d. Photograph all significant areas of completed construction.

e. Do not take completion photographs until all construction trailers, excess materials, trash, and debris have been removed.

f. Employ a professional photographer approved by the Construction Manager to photograph the Project.

2. Provide video recordings of the Site.

a. Record the condition of all existing facilities in or abutting the construction area (right-of-way) including streets, curb and gutter, utilities, driveways, fencing, landscaping, etc., prior the beginning of construction. Provide one copy of the dated and labeled recording to the Construction Manager before the start of construction. Provide additional recording as directed by the Construction Manager if the recording provided is not considered suitable for the purpose of recording pre-existing conditions.

b. Provide a video recording of the Site after the Project is complete and all construction trailers, excess materials, trash, and debris have been removed. Provide a 360-degree view of the Project from a consistent height and angle.

c. Format must allow photographic still shots to be extracted from the video recording.

B. All photographs and video recordings are to become the property of the Owner. Photographs or recordings may not be used for public or private publication or display without the written consent of the Owner.

1.02 DOCUMENTATION

Submit photographic documentation and digital file of the video recording in accordance with Section 01 33 00 “Document Management.”

1.03 QUALITY ASSURANCE

Provide clear photographs and video recordings taken with proper exposure. View photographs and video recordings in the field and take new photographs or video recordings immediately if

photos of an adequate print quality cannot be produced or video quality is not adequate. Provide photographs with adequate quality and resolution to permit enlargements.

PART 2 - PRODUCTS

2.01 PHOTOGRAPHS

A. Provide photographs in digital format with a minimum resolution of 1280x960, accomplished without a digital zoom.

B. Take photographs at locations acceptable to the Construction Manager.

C. Provide a digital copy of each photograph taken.

2.02 VIDEO RECORDING

A. Provide video recordings in digital format that can be downloaded and played with Windows Media Player in common format in full screen mode without loss of resolution.

B. Identify Project on video by audio or visual means.

C. Provide video with file size that does not exceed 1 GB.

D. Provide video resolution of at least 1080p.

E. The quality of the video must be sufficient to determine the existing conditions of the construction area. Camera panning must be performed while at rest; do not pan the camera while walking or driving. Camera pans should be performed at intervals sufficient to clearly view the entire construction area.

F. Construction stationing is to be annotated in the video.

G. The entire construction area recording must be submitted at once. Sections submitted separately will not be accepted.

H. Linear projects should be recorded linearly from beginning to end.

I. Site components must be video recorded in an organized sequential order with major components identified.

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 34 00 BUY AMERICAN REQUIREMENTS

PART 1 - GENERAL

1.01 REQUIREMENTS TO BUY AMERICAN

Funding for this Project is derived in part or entirely from the Federal Government under the American Recovery and Reinvestment Act (ARRA) of 2009. Comply with Laws and Regulations related specifically to ARRA. This requirement applies regardless of other Laws and Regulations.

1.02 DOCUMENTATION

A. Provide documentation of compliance with Buy American provisions.

B. Provide a tabulation of the manufactured goods to be provided under this Project in the Form provided by the Construction Manager to indicate compliance with Buy American requirements.

C. Provide information and certifications required by Section 01 33 02 “Shop Drawings” and Section 01 33 03 “Product Data” to demonstrate compliance with the Buy American requirements.

1.03 PROVIDING PRODUCTS

Obtain certifications from Subcontractors and Suppliers to indicate that products offered for incorporation into the Project comply with Buy American Provisions.

1.04 NONCOMPLIANT PRODUCTS

A. Noncompliant products are Defective. Unless a Late Waiver is obtained, products are to be removed and replaced with products meeting the Buy American Provisions.

B. Owner may elect to accept the Defective Work under provisions of the General Conditions, provided the Contract Price is reduced to reimburse the Owner for money lost from funding agencies.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 35 00 SPECIAL PROCEDURES

PART 1 - GENERAL

1.01 CONSTRUCTION SEQUENCE

A. The proposed work in the contract documents include improvements to several wastewater collection systems that are interconnected, where changes to one part of the system will affect the other. Any downstream improvements for interconnected systems must be completed before upstream improvements. Interconnectivity of the proposed improvements and required sequence of work such that downstream improvements are complete prior to upstream improvements is described below.

1. All proposed collection system and lift station improvements, including increases in capacity, ultimately pump upstream of Lift Station No. 11 and thence to the Port Isabel WWTP.

   The 16” force main improvements along Woodys Lane serving Lift Station No. 11 must be in place prior to pump improvements at Lift Station No. 4.

2. Lift Station No. 4 pumps into a joint 10” force main that terminates at a manhole upstream of Lift Station No. 11. Seven (7) properties along SH-100 have private lift stations that also pump directly into this 10” force main, as well as the existing 4” force main from Lift Station No. 10 and the existing 6” force amin from Lift Station No. 25. The existing Lift Station No. 10 force main will be replaced and decoupled from the existing Lift Station No. 4 force main; to tie into the existing gravity system at Michigan avenue (work to be complete by the District). The existing Lift Station No. 25 force main will be replaced and decoupled from the existing Lift Station No. 4 force main; to tie into the proposed 18” gravity main to decommission Lift Station No. 30. A new 8” gravity main along SH-100 will be installed to serve the eight (8) properties currently tied into the 10” force main.

   a. Regarding Lift Station No. 10 Force Main Improvements: This work will be completed by the District. The Lift Station No. 10 force main improvements must be complete before the pump improvements are made to Lift Station No. 4.

   b. Regarding Lift Station No. 25 Force Main Improvements: The proposed force main for Lift Station No. 25 will terminate at the Lift Station No. 30 proposed gravity main improvements.

      Lift Station No. 30 proposed gravity main improvements must be in place before completion of the Lift Station No. 25 force main replacement.

      The decoupling of the proposed Lift Station No. 25 force main from the existing Lift Station No. 4 force main must be complete and serviceable before the pump improvements are made to Lift Station No. 4.

   c. Regarding the SH-100 Gravity Main Improvements: The services tied to the existing 10” force main along SH-100 must be redirected to the proposed SH-100 gravity main improvements prior to completion of pump improvements at Lift Station No. 4.

The properties the proposed gravity main crosses that will require open cut of driveway entrance from SH-100 are listed below with coordination requirements. At a minimum, contacts must be notified one week prior to proposed construction. Open cut approval was not received for Burger King, Los Tortugas, and Walgreens. Installation of the proposed gravity main under these driveways must be completed by bore as shown in the plans unless written approval is received from the property owner.

The private lift station from The Gym / Treasure Island will remain connected to the force main from Lift Station No. 25. The remaining seven (7) properties tied into the existing 10" force main include Church's Chicken, HEB, Amigo Pawn Shop, Stripes, Burger King, Los Tortugas, and Walgreens. Each property will need to be disconnected from the existing 10" force main from Lift Station No. 4 and tied into the proposed SH-100 Gravity Main as indicated in the plans.

Property	Contact Name	Contact Number	Special Conditions
HEB	Rene Martinez	956-943-1171	Work to be completed between the hours 9:00 PM to 6 AM; with driveway access provided outside of working hours.
Amigo Pawn Shop	Robert Galindo	956-554-0293	None.
Stripes	Jose Garza	956-9433478	None.

d. Regarding Lift Station No. 4 Pump Improvements:

The proposed pumps that are to be installed at Lift Station No. 4 have a higher head than the pumps that are currently installed.

All force mains currently tied into the existing 10" Lift Station No. 4 force main must be disconnected from the force main (Lift Station No. 10; SH-100 Private Connections; and Lift Station No. 25) before the new Lift Station No. 4 pumps are brought online. The proposed pumps at both lift stations must be installed at relatively the same time to match their head conditions and provide the required flow from each lift station when both lift stations are operating at the same time.

3. Lift Station No. 15 pumps to a manhole upstream of Lift Station No. 16 and proposed improvements include no increases in capacity. This work can be complete at any time in the project sequence.
4. Lift Station No. 17 pumps to a manhole upstream of Lift Station No. 16 and proposed improvements include no increases in capacity. This work can be complete at any time in the project sequence.

   Lift Station No. 17 proposed force main improvements must be completed and tied into the new lift station prior to using the new pumps at Lift Station No. 17.
5. Lift Station No. 35 pumps to a manhole upstream of Lift Station No. 11 and includes no increases in capacity. This work can be complete at any time in the project sequence.
6. The Hickman Road gravity main replacement can be complete at any time in the project sequence.

B. Consider the sequences, duration limitations, and governing factors outlined in this Section to prepare the schedule for the Work.

C. Perform the Work not specifically described in this Section as required to complete the entire Project within the Contract Times.

1.02 OWNER ASSISTANCE

The Owner will assist the Contractor in cleaning out wet wells using their vacuum truck. Owner will only provide the vacuum truck and operator. Contractor is responsible for cleaning and directing the work.

1.03 CRITICAL OPERATIONS

A. The Owner has identified critical operations that must not be out of service longer than the designated maximum out of service time and/or must be performed only during the designated times. These have been identified in the table below:

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 40 00 QUALITY MANAGEMENT

PART 1 - GENERAL

1.01 OVERVIEW

A. Quality management refers to the overall process of delivering a completed Project to the Owner that complies with the requirements of the Contract Documents. Quality management applies to documentation, products, services and the Work.

B. The Contractor is responsible for the quality of documentation, products, services and the Work provided.

1. Contractor is to integrate quality control procedures into the execution of the Work that are adequate to produce a Project that meets the requirements of the Contract Documents while minimizing loss of time and increased cost. Contractor is solely responsible for time and cost impacts of correcting Defective Work.

2. Contractor is to provide all testing and inspection required to control the quality of the Work in progress to determine that completed Work will comply with the requirements of the Contract Documents.

3. Contractor is to provide verification or acceptance testing as required by the Contract Documents to demonstrate that the completed Work complies with the requirements of the Contract Documents, except for those test that the OPT has determined are to be conducted independent of the Contractor and identified as OPT testing in the Owner's Quality Management Plan.

1.02 STANDARDS

A. Provide testing laboratories that comply with the American Council of Independent Laboratories (ACIL) "Recommended Requirements for Independent Laboratory Qualifications."

B. Perform testing per recognized test procedures as listed in the various Sections of the Specifications, standards of the State Department of Transportation, ASTM International (American Society for Testing and Materials), or other testing associations. Perform tests in accordance with published procedures for testing issued by these organizations.

1.03 DOCUMENTATION

A. Provide documentation which includes:

1. Contractor's Quality Management Plan that establishes the methods of ensuring compliance with the Contract Documents. Submit this plan as Product Data per Section 01 31 13 "Project Coordination."

2. A statement of qualifications for any proposed testing laboratory that includes a list of the engineers and technical staff that will provide testing services on the Project, descriptions of the qualifications of these individuals, list of tests that can be performed, equipment used with date of last certification, and a list of recent projects for which testing has been performed with references for those projects.

3. Certified Test Reports for products to be incorporated into the Project. Provide reports to indicate that the proposed products comply with the Contract Documents or indicate that the proposed products do not comply with the Contract Documents and why those products do not comply. Submit Certified Test Reports as part of a Shop Drawing submitted per Section 01 33 02 “Shop Drawings.”

4. Certified Test Reports for inspections and testing required in this Section and in other Sections of the Specifications. Provide reports to indicate that the Work complies with the Contract Documents or indicate that the Work does not comply with the Contract Documents and why the Work does not comply. Submit these test reports on forms provided by the Construction Manager per Section 01 33 00 “Document Management.”

5. Certified Test Reports of Defective Work and Certified Test Reports documenting that successful corrective action has produced Work that complies with the Contract Documents. Maintain a register listing Defective Work and record when corrective action has produced Work that complies with the Contract Documents. Present this Defective Work register as part of the Quality Report at progress meetings as described in Paragraph 1.05.E. Incorporate this register in the closeout documentation per Section 01 70 00 “Execution and Closeout Requirements” to demonstrate that all Defective Work has been corrected.

1.04 OWNER’S QUALITY MANAGEMENT ACTIVITIES

A. OPT may perform its own verification testing independent of the Contractor. Owner’s Quality Management Plan describes the OPT’s anticipated verification testing program for this Project. The preliminary testing plan is provided as Appendix B to the Contract Documents. This plan outlines the anticipated testing in general terms and may not reflect the actual testing performed by the OPT. Actual testing will depend on the Contractor’s means, methods, and procedures of construction which will not be known until the Contractor submits the Contractor’s Quality Control Plan (CQCP) to the OPT. There is no guarantee that all testing in the preliminary OQMP included in the Bidding/Proposal Documents will be performed by the OPT. Contractor will arrange and pay for all production control testing deemed necessary by the Contractor to produce quality results.

B. Quality management activities of the OPT are for verifying the results of the Contractor’s Work complies with the requirements of the Contract Documents. Performance or non-performance of verification activities by the OPT:

1. Does not relieve the Contractor of its responsibility to provide Work and furnish products that comply with the requirements of the Contract Documents;

2. Does not relieve the Contractor of its responsibility to provide adequate quality control measures to produce quality documents, products, services or Work;

3. Does not relieve the Contractor of its responsibility for damage to or loss of Work or products before OPT’s acceptance; and

4. Does not affect the continuing rights of the Owner after OPT’s acceptance of the completed Work.

C. The Work is subject to OPT’s observations or testing at any time. Products which have been tested or inspected and accepted by the OPT at a supply source or staging area may be

inspected or tested again by the OPT before, during, or after incorporation into the Work and rejected if products do not comply with the Contract Documents. Verification testing performed by the OPT will be paid for by the Owner, except for testing related to Defective Work as discussed in Paragraph 3.03.

1.05 CONTRACTOR'S RESPONSIBILITIES

A. Review the OQMP and provide a Contractor's Quality Control Plan (CQCP) outlining testing to be provided by the Contractor per Paragraph 1.07.

B. Implement the CQCP to provide Work that complies with the requirements of the Contract Documents.

1. Provide quality documents meeting the requirements of the Contract Documents.

2. Provide services meeting the requirements of the Contract Documents.

3. Provide the services of a Construction Materials Inspection and Testing (CMIT) provider meeting the requirements of this Section to provide testing required by the Contract Documents to demonstrate that products proposed for the Project in Shop Drawings and Product Data fully comply with the Contract Documents.

4. Inspect and test products to be incorporated into the Project to identify defects before installing them. Do not install Defective products. Conspicuously mark Defective products and remove from the Site. If products are installed before the defect is recognized, remove the Defective products, mark them as Defective and remove them from the Site when the defect is recognized.

5. Integrate production quality control measures into construction activities to produce Work meeting the requirements of the Contract Documents. Inspect self-performed Work and the Work of Subcontractors and Suppliers to identify defects. Correct or replace Defective Work.

6. Provide facilities, equipment, and Samples required for inspections and tests.

a. Give the Construction Manager adequate notice before proceeding with Work that would interfere with inspections or testing.

b. Notify the Construction Manager and CMIT provider prior to the time that testing is required, providing adequate lead time to allow arrangements for inspections or testing to be performed.

c. Do not proceed with Work that would impact the ability to correct defects, or with Work that would require that it be removed to correct defects, until testing is complete, and test results indicate that the corrected Work is acceptable.

d. Provide safe access for all CMIT activities, including those to be conducted as part of the Owner's Quality Management Program.

e. Cooperate fully with the performance of sampling, inspection, and testing. Provide personnel to assist with sampling or to assist in making inspections and field tests.

f. Provide Samples and products in adequate quantities for testing at the Site or at the production source of the product for testing.

g. Provide facilities required to store and cure test Samples.

h. Provide calibrated scales and measuring devices for OPT's use in performing inspections and testing.

i. Provide adequate lighting to allow OPT observations.

j. Make Contract Documents available to testing agencies when requested.

C. Perform tests as indicated in Contract Documents. All verification testing is to be observed by the Construction Manager or its designated representative.

D. Submit test reports to the Construction Manager.

E. Provide an update on quality control activities performed the previous month and planned for the coming month at monthly progress meetings required by Section 01 31 13 "Project Coordination."

F. Determine testing or inspections required to implement the CQCP. Include costs for additional testing and inspections required to meet Contractor's quality control obligations in the Contract Price.

1.06 CONTRACTOR'S QUALITY CONTROL MANAGER

A. Provide a Quality Control Manager for the Project. The Quality Control Manager must have authority to reject Defective Work, redirect the efforts of the Contractor, Subcontractor and Suppliers to correct Defective Work and implement steps to prevent future Defective Work.

B. An individual other than the resident superintendent must serve as Quality Control Manager. The person named as Quality Control Manager, while working under the supervision of the Contractor's superintendent, must have time to direct project quality control efforts and take appropriate action as required. Quality control duties must take priority over any other assigned duties.

1.07 CONTRACTOR'S QUALITY CONTROL PLAN

A. Provide a CQCP that describes testing and inspections for Work performed at the Site and at remote locations. Include Work by Subcontractors and Suppliers. The CQCP is to include:

1. A description of the quality control organization, including an organization chart showing lines of authority to control the quality of Work;

2. Documentation describing name, qualifications (in resume format), duties, responsibilities, and level of authority of the Quality Control Manager.;

3. The name, qualifications (in resume format), duties, responsibilities, and authorities of other persons assigned a quality control function;

4. Procedures for scheduling, reviewing, certifying, and managing documentation including documentation provided by Subcontractors and Suppliers;

5. Control, verification, and acceptance testing procedures for each specific test. Include:

a. Name of tests to be performed,

b. Specification paragraph requiring test,

c. Parameters of Work to be tested,

d. Test frequency,

e. Persons responsible for each test, and

f. Applicable industry testing standards and laboratory facilities to be used for the test;

6. Incorporate the testing specified in the OQMP into the CQCP, specifically identifying the tests or inspections that will be provided by the OQMP;

7. Procedures for tracking and documenting quality management efforts per Paragraph 1.03.

8. Reporting procedures which incorporate the use of forms provided by the Construction Manager.

9. The name of the proposed testing laboratories along with documentation of qualifications per Paragraph 1.03.

B. Use the Contractor's Quality Control Plan Checklist provided by the Construction Manager to review the CQCP before submitting and include a copy of the completed checklist with the CQCP. Do not begin Work until the CQCP is accepted. Submit an interim plan covering only the portion of Work to be performed if the Contractor plans to begin Work prior to submitting the complete CQCP for the Project. Do not begin Work on other parts of the Project until the complete CQCP is accepted.

C. Meet with the OPT 7 days after CQCP is submitted and before start of construction to discuss the CQCP.

D. Notify the Construction Manager of any changes to the CQCP or quality control personnel.

1.08 CONTRACTOR'S USE OF OWNER'S TEST REPORTS

A. Contractor will receive copies of all test reports documenting Owner's verification tests. Contractor is entitled to rely on the accuracy of these tests results and use these as part of its quality control efforts.

B. Contractor may submit a Change Proposal if the Owner's testing program deviates significantly from the OQMP. Contractor must demonstrate that actual testing and inspection costs were incurred implementing the CQCP as a result of OPT's decision to not provide testing described in the OQMP.

1.09 LIMITATION OF AUTHORITY OF THE TESTING LABORATORY

A. The testing laboratory representatives are limited to providing testing services and interpreting the results of the test performed.

B. The testing laboratory is not authorized to:

1. Alter the requirements of the Contract Documents;

2. Accept or reject any portion of the Work;

3. Perform any of the duties of the Contractor; or

4. Direct or stop the Work.

1.10 TEST REPORTS

A. Certified Test Reports are to be prepared for all tests.

1. Tests performed by testing laboratories may be submitted on their standard test report forms if acceptable to the OPT using the process directed by the Construction Manager. These reports must include the following:

a. Name of the Owner, Project title and number, and name of the Contractor;

b. Name, address, and telephone number of the laboratory;

c. Name and signature of the laboratory personnel performing the test;

d. Description of the product being sampled or tested;

e. Date and time of sampling, inspection, and testing;

f. Date the report was issued;

g. Description of the test performed;

h. Weather conditions and temperature at time of test or sampling;

i. Location at the Site or structure where the test was taken;

j. Standard or test procedure used in making the test;

k. A description of the results of the test;

l. Statement of compliance or non-compliance with the Contract Documents; and

m. Interpretations of test results, if appropriate.

2. Submit reports on tests performed by Contractor, Subcontractors, or Suppliers on the as directed by the Construction Manager.

3. OPT will prepare test reports on tests performed by the OPT.

B. Submit test reports as directed by the Construction Manager within 24 hours of completing the test. Flag tests reports with results that do not comply with Contract Documents for immediate attention. Notify the Construction Manager using acceptable means other than the test report, immediately of any test that fails to comply with the Contract Documents.

1.11 DELIVERY, STORAGE, AND HANDLING

A. Handle and protect test specimens of products and construction materials at the Site in accordance with recognized test procedures. Provide facilities for storing, curing, and processing test specimens as required by test standards to maintain the integrity of Samples. Transport test specimens in a manner to prevent damage to specimens while in transit.

PART 2 - PRODUCTS

2.01 TESTING APPARATUS

A. Furnish testing apparatus and related accessories necessary to perform the tests.

2.02 SAMPLE PRODUCTS

A. Provide Samples of products in adequate quantity for testing.

PART 3 - EXECUTION

3.01 IMPLEMENTING CONTRACTOR'S QUALITY CONTROL PLAN

A. Perform quality control observations and testing as required in each Section of the Specifications and where indicated on the Drawings.

B. Include the following phases for each definable work task. A definable work task is one which is separate and distinct from other tasks, has separate control requirements, may be provided by different trades or disciplines, or may be work by the same trade in a different environment.

1. Planning Phase: Perform the following before beginning each definable work task:

a. Review the Contract Documents.

b. Review documents the Contractor will submit and determine that they are complete in accordance with the Contract Documents.

c. Check to ensure that all materials and/or equipment have been tested, submitted, and approved.

d. Examine the work area to ensure that all required preliminary Work has been completed and complies with the Contract Documents.

e. Examine required materials, equipment, and sample Work to ensure that they are on hand, conform to Contract Documents, Shop Drawings and Product Data, and are properly stored.

f. Review requirements for quality control inspection and testing.

g. Discuss procedures for controlling quality of the Work. Document construction tolerances and workmanship standards for the work task.

h. Check that the portion of the plan for the Work to be performed incorporates document review comments.

i. Discuss results of planning phase with the Construction Manager. Conduct a meeting attended by the Construction Manager, Quality Control Manager, superintendent, other quality control personnel as applicable, and the foreman responsible for the work task. Instruct applicable workers as to the acceptable level of workmanship required to meet the requirements of the Contract Documents. Document the results of the planning phase actions by separate meeting minutes prepared by the Quality Control Manager and attached to the quality control report.

j. Do not move to the next phase unless results of investigations required for the planning phase indicate that requirements have been met.

2. Work Phase: Complete this phase after the planning phase:

    a. Notify the Construction Manager at least 1 week in advance of beginning the Work and discuss the review of the planning phase effort to indicate that requirements have been met.

    b. Check the Work to ensure that it is in full compliance with the Contract Documents.

    c. Verify adequacy of controls to ensure full compliance with Contract Documents. Verify required control inspection and testing is performed.

    d. Verify that established levels of workmanship meet acceptable workmanship standards. Compare with required Sample panels as appropriate.

    e. Repeat the work phase for each new crew to work on-site, or any time acceptable specified quality standards are not being met.

3. Follow-Up Phase: Perform daily checks to ensure control activities, including control testing, are providing continued compliance with contract requirements:

    a. Make checks daily and record observations in the quality control documentation.

    b. Conduct follow-up checks and correct all defects prior to the start of additional work tasks that may be affected by the Defective Work. Do not build upon nor conceal Defective Work.

    c. Conduct a review of the Work at least 1 month prior to the expiration of the correction period prescribed in the General Conditions with the OPT. Correct defects as noted during the review.

C. Conduct additional planning and work phases if:

1. The quality of on-going Work is unacceptable;

2. Changes are made in applicable quality control staff, on-site production supervision, or crews;

3. Work on a task is resumed after a substantial period of inactivity; or

4. Other quality problems develop.

3.02 DEFECTIVE WORK

A. Immediately correct any Defective Work or notify the Construction Manager why the Work is not to be corrected immediately and when corrective action will be completed.

B. Work performed that is connected or adjacent to Defective Work or Work that would have to be removed to correct Defective Work is also considered to be Defective. Contractor is responsible for all costs associated with replacing any acceptable Work that must be removed, or might be damaged by corrective actions.

C. Document Defective Work, corrective actions taken to correct defects and that corrected Work complies with the Contract Documents.

D. Implement countermeasures to prevent future Defective Work.

E. No payment will be made for Defective Work. Remove Work from the Application for Payment if Work paid for on a previous Application for Payment is found to be Defective.

F. Owner will withhold payment for Defective Work or Work that has not been tested or inspected in accordance with the CQCP, OQCP, or the Contract Documents.

3.03 VERIFICATION TESTING FOR CORRECTED DEFECTS

A. Provide verification testing on corrected Work when corrective action is complete to demonstrate that the corrected Work complies with the Contract Documents. Conduct the same tests or inspections used to determine that the original Work was Defective. Different tests or methods may be used if approved by the OPT. Document that Defective Work has been corrected with the Construction Manager.

B. Pay for verification testing until Work meets quality requirement set forth in the Contract Documents. OPT may perform verification testing as part of its Quality Management Program and impose a Set-off to recover the cost for this testing.

3.04 OWNER'S PRELIMINARY QUALITY CONTROL PLAN

Spec. Section	Test / Frequency	OPT or Contractor
03 30 00	Compressive strength. One set of three cylinders for each concrete placement with one additional set of cylinders for each 50 yards in a single placement.	OPT
04 22 00	CMU compressive strength for each type of unit provided. Mortar aggregate ratio, mortar property, and grout compressive strength test for each mix provided.	OPT
09 96 01.01 / 09 96 01	Protective coatings testing	Contractor
31 05 23.13	Soil cement durability/quality testing.	OPT
31 23 10 / 31 23 23.34 / 31 23 33	Backfill density/moisture testing.	OPT
32 12 16	Pavement mix design testing.	OPT
33 05 01.09 / 33 05 01.13	Pressure and leakage test (entire pipeline)	Contractor
33 05 01.09 / 33 05 01.13	Internal deflection testing of pipelines	Contractor

END OF SECTION

01 50 00 TEMPORARY FACILITIES AND CONTROLS

PART 1 - GENERAL

1.01 SUMMARY

A. Provide temporary facilities, Contractor's field offices, storage sheds, workshops, and other facilities needed to complete the Work.

B. Provide temporary utilities needed to support the operation of the facilities and construction activities.

C. Provide and maintain temporary project identification signs for Owner and Funding Agency.

D. Provide temporary informational signs to identify key elements of construction and direct the flow of traffic.

E. Provide a weatherproof kiosk for display of permits and other notices required by Laws and Regulations.

1.02 DOCUMENTATION

Submit a Shop Drawing for project signage.

1.03 QUALITY ASSURANCE

Inspect and test each utility before using facilities. Arrange for all required inspections and tests by regulatory agencies, and obtain required certifications and permits for use of facilities.

1.04 DELIVERY, STORAGE, AND HANDLING

Transport, unload, and set up all temporary buildings and utilities.

1.05 JOB CONDITIONS

A. Locate buildings and sheds at the Site as indicated or as approved by the OPT.

B. Prepare the Site by removing trees, brush, or debris and performing demolition or grubbing needed to clear a space adequate for the structures.

C. Provide Contractor's temporary facilities and utilities in time to avoid delays in the performance of the Work.

D. Provide and maintain temporary facilities and utilities.

E. Operate temporary facilities in a safe and efficient manner.

1. Restrict loads on utilities to operate within their designed or designated capacities.

2. Provide sanitary conditions. Prevent public nuisance or hazardous conditions from developing or existing at the Site.

3. Prevent freezing of pipes, flooding, or the contamination of water.

4. Maintain site security and protection of the facilities.

F. Remove temporary facilities and utilities when construction is complete and removal is approved by the Construction Manager.

PART 2 - PRODUCTS

2.01 SIGN MATERIALS

A. Provide wood or metal signs in sound condition, structurally adequate to withstand wind and weather.

B. Provide 3/4-inch exterior grade A/D face veneer plywood with medium density overlay for sign surface.

C. Provide galvanized or stainless steel bolts, brackets, fasteners, and other hardware.

D. Provide exterior quality coatings.

2.02 CONTRACTOR'S FIELD OFFICE

A. Furnish a field office of adequate size for Contractor's use, if required by the Contractor.

B. Subcontractors may provide their own field offices only when space is available on the Site and the OPT agrees to its size, condition, and location.

2.03 TEMPORARY STORAGE BUILDINGS

Furnish storage buildings of adequate size to store any materials or equipment delivered to the Site that might be affected by weather.

2.04 TEMPORARY SANITARY FACILITIES

A. Provide sanitary facilities at the Site for the entire duration of the Project. Maintain these facilities in a clean and sanitary condition at all times, and comply with the requirements of the local health authority. On large sites, provide portable toilets at such locations so that no point at the Site will be more than 600 feet from a toilet.

B. Use these sanitary facilities. Do not use restrooms within existing or Owner-occupied buildings.

2.05 TEMPORARY UTILITIES

A. Provide the temporary utilities for administration, construction, testing, disinfection, and startup of the Work, including electrical power, water, and telephone. Pay all costs associated with furnishing temporary utilities.

1. Provide a source of temporary electrical power of adequate size for construction procedures.

a. Use existing power systems where spare capacity is available. Provide temporary power connections that do not adversely affect the existing power supply. Submit connections to the Construction Manager for approval prior to installation.

b. Provide electrical pole and service connections that comply with Laws and Regulations and the requirements of the power company.

2. Provide temporary water. Potable water may be purchased from the Laguna Madre Water District.

B. Provide power for construction and storage. Provide power to energize space heaters for stored electrical equipment.

2.06 WATER FOR CONSTRUCTION

Provide temporary water. Potable water may be purchased from the Owner by obtaining a water meter from the Owner and transporting water from a water hydrant. Non-potable water may be used for hydraulic testing of non-potable basins or pipelines. Include the cost of water in the Contract Price.

PART 3 - EXECUTION

3.01 LOCATION OF TEMPORARY FACILITIES

Locate temporary facilities in areas approved by the Construction Manager. Construct and install signs at locations approved by the Construction Manager. Install informational signs so they are clearly visible.

3.02 PROJECT IDENTIFICATION SIGNS

A. Arrange for a professional sign painter to paint and erect signs for the Site in accordance with the sign information provided in the Contract Documents or provided by Owner and Funding Agencies.

B. Sign will include identification of the OPT and Contractor (including appropriate logos, as required) and other Project information as determined by the Construction Manager.

C. Three (3) project signs will be provided. One (1) will be placed at each of the following locations per standards provided in section 00 74 06 “Guidance on State Revolving Fund Project Public Awareness (TWDB-1109)”: Lift Station No. 4, Intersection of 2nd Street and SH-100, Intersection of S. Yturria Street and W. Madison Street. At a minimum, the signs must include the following information.

1. The name of the facility, project, and community
2. Project cost
3. Texas Water Development Board Name and Logo (downloadable from TWDB-1109 form)
4. The EPA logo and the following text: “Financial assistance provided by EPA to complete this project.”

D. Paint sign on a 4-foot by 8-foot by 3/4-inch exterior grade plywood board. Frame plywood with 2 x 4 wood frame and mount on not less than two 4 x 4 posts. House plywood board in a channel routed 1/2 inch deep in the 2 x 4 frame. Shoulder, glue, and screw corners.

3.03 TEMPORARY LIGHTING

A. Provide temporary lighting inside buildings once buildings are weatherproof.

B. Provide exterior security lighting.

C. Provide lighting that is adequate to perform Work within any space. Temporary lights may be removed once the permanent lighting is in service.

D. Provide portable flood lights at any time that Work will be performed outside the structure at night. Provide adequate lighting at any location Work is being performed.

3.04 DRINKING WATER

A. Provide all field offices with potable water. Provide a dispenser and cooling apparatus if bottled drinking water is provided.

B. Pay for water services and maintain daily.

3.05 CONSTRUCTION FENCE

The project sites are active wastewater facilities and must always be secure as required by TCEQ Chapter 217. Contractor provided temporary and permanent fencing enclosing the facility must meet the requirements of Chapter 217, and must be at least 6-feet tall with 3-strands of barbed wire or 8-feet tall without barbed wire. Contractor must maintain access to the site for the Owner's operational staff throughout construction.

Install and maintain a chain-link construction fence around construction storage areas. Fence must be a minimum of 6 feet high. Provide gates with padlocks.

3.06 REMOVAL OF TEMPORARY FACILITIES

A. Remove temporary buildings, sheds, and utilities at the conclusion of the Project and restore the Site to original condition or finished condition in accordance with the Drawings.

B. Remove informational signs upon completion of construction.

C. Remove project identification signs, framing, supports, and foundations upon completion of the Project.

3.07 MAINTENANCE AND JANITORIAL SERVICE

A. Provide janitorial service for the OPT's field office on a weekly basis or as requested. Empty trash receptacles daily or as needed.

B. Maintain signs and supports in a neat, clean condition. Repair damage to structures, framings, or signs.

C. Repair any damage to Work caused by placement or removal of temporary signage.

D. Service, maintain, and replace, if necessary, the field office computer equipment throughout the Project as required by the OPT including replacement cartridges for all office equipment.

END OF SECTION

01 57 00 TEMPORARY CONTROLS

PART 1 - GENERAL

1.01 SUMMARY

A. Provide labor, materials, equipment, and incidentals necessary to construct temporary facilities to provide and maintain control over environmental conditions at the Site. Remove temporary facilities when no longer needed.

B. Construct temporary impounding works, channels, diversions, furnishing, and operation of pumps, installing piping and fittings, and other construction for control of conditions at the Site. Remove temporary controls at the end of the Project.

C. The project is located in an area with a high-water table. Contractor is responsible for providing all dewatering required to complete the project at no additional cost to the Owner.

1.02 DOCUMENTATION

A. Provide Shop Drawings in accordance with Section 01 33 02 “Shop Drawings.”

B. Provide copies of notices, records, and reports required by the Contract Documents or Laws and Regulations as Product Data in accordance with Section 01 31 13 “Project Coordination.”

1.03 QUALITY ASSURANCE

A. Construct and maintain temporary controls with adequate workmanship using durable materials to provide effective environmental management systems meeting the requirements of the Contract Documents and Laws and Regulations. Use materials that require minimal maintenance to prevent disruption of construction activities while providing adequate protection of the environment.

B. Periodically inspect systems to determine that they are meeting the requirements of the Contract Documents.

1.04 POLLUTION CONTROL

A. Prevent the contamination of soil, water, or atmosphere by the discharge of noxious substances from construction operations. Provide adequate measures to prevent the creation of noxious air-borne pollutants. Prevent dispersal of pollutants into the atmosphere. Do not dump or otherwise discharge noxious or harmful fluids into drains or sewers, nor allow noxious liquids to contaminate public waterways in any manner.

B. Provide equipment and personnel and perform emergency measures necessary to contain any spillage.

1. Contain chemicals in protective areas and do not dump on soil. Dispose of such materials at off-site locations in an acceptable manner.

2. Excavate contaminated soil and dispose at an off-site location if contamination of the soil does occur. Fill resulting excavations with suitable backfill and compact to the density of the surrounding undisturbed soil.

3. Provide documentation to the Owner which states the nature and strength of the contaminant, method of disposal, and the location of the disposal site.

4. Comply with Laws and Regulations regarding the disposal of pollutants.

C. Groundwater or run-off water which has come into contact with noxious chemicals, sludge, or contaminated soil is considered contaminated. Do not allow contaminated water to enter streams or water courses, leave the Site in a non-contained form, or enter non-contaminated areas of the Site.

1. Construct temporary holding ponds or take other precautions and measures as required to contain the contaminated water and pump to a designated storage area.

2. Wash any equipment used for handling contaminated water or soil within contaminated areas three times with uncontaminated water prior to using such equipment in an uncontaminated area. Dispose of wash water used to wash such equipment as contaminated water.

1.05 EARTH CONTROL

A. Remove excess soil, spoil materials, and other earth not required for backfill. Control stockpiled materials to eliminate interference with Contractor and Owner's operations.

B. Dispose of excess earth off the Site. Provide written approval from the property owner for soils deposited on private property as Product Data per Section 01 31 13 "Project Coordination." Obtain approval of the OPT if this disposal impacts the use of Site or other easements.

1.06 AIR POLLUTION CONTROL

A. Air Pollution Watch Days:

1. Air Pollution Watch Days (APWD) may occur in the following times:

a. Typical Ozone Season: May 1 through October 31.

b. Critical Emission Time: 6:00 a.m. to 10:00 a.m.

2. Watch Days:

a. State or local environmental regulatory agencies, in coordination with the National Weather Service, may designate the following day as an APWD by 3:00 p.m. on the prior afternoon.

b. Begin work after 10:00 a.m. on designated APWD if work requires the use of heavy construction equipment for run times in excess of 1 hour prior to 10:00 a.m. Heavy construction equipment may be used prior to 10:00 a.m. if equipment is certified by EPA as "Low Emitting" or equipment burns Ultra Low Sulfur Diesel (ULSD), diesel emulsions, or alternative fuels such as CNG.

B. Obtain air permit for construction activities per requirements of Laws and Regulations.

1.07 TEMPORARY STORMWATER POLLUTION CONTROL [NOT USED]

1.08 MANAGEMENT OF WATER

A. Manage water resulting from rains or ground water at the Site. Maintain trenches and excavations free of water at all times.

B. Lower the water table in the construction area by acceptable means if necessary to maintain a dry and workable condition at all times. Provide drains, sumps, casings, well points, and other water control devices as necessary to remove excess water.

C. Provide continuous operation of water management actions. Maintain standby equipment to provide proper and continuous operation for water management.

D. Ensure that water drainage does not damage adjacent property. Divert water into the same natural watercourse in which its headwaters are located, or other natural stream or waterway as approved by the Owner. Assume responsibility for the discharge of water from the Site.

E. Remove the temporary construction and restore the Site in a manner acceptable to the Construction Manager and to match surrounding material at the conclusion of the Work.

PART 2 - PRODUCTS

2.01 MATERIALS

Provide materials that comply with Laws and Regulations.

PART 3 - EXECUTION

3.01 CONSTRUCTING, MAINTAINING, AND REMOVING TEMPORARY CONTROLS

A. Construct temporary controls in accordance with Laws and Regulations.

B. Maintain controls in accordance with regulatory requirements where applicable or in accordance with the requirements of the Contract Documents.

C. Remove temporary control when no longer required, but before the Project is complete. Correct any damage or pollution that occurs as the result of removing controls while they are still required.

END OF SECTION

01 57 23 TEMPORARY STORMWATER POLLUTION CONTROL

PART 1 - GENERAL

1.01 SUMMARY

A. Furnish labor, materials, equipment, and incidentals necessary to provide stormwater pollution prevention for the duration of the construction period including furnishing, installing, and maintaining erosion and sediment control structures and procedures and properly removing the features when no longer required.

B. Develop, implement, and maintain a stormwater pollution prevention plan (SWPPP) in compliance with local, state, and federal Laws and Regulations. Provide preventive measures to keep sediment and other pollutants from the construction activity from entering any stormwater system, including open channels.

C. Comply with the Texas Commission on Environmental Quality General Permit, TXR150000, General Permit for storm water discharges from construction activities under the Texas Pollutant Discharge Elimination System (TPDES) program.

D. File all required legal notices and obtain required permits prior to beginning any construction activity.

E. This Section provides guidelines and Best Management Practices information for the Contractor to use in adhering to all local, state, and federal environmental Laws and Regulations with respect to stormwater pollution prevention during construction activities.

1.02 DOCUMENTATION

A. Documentation must be provided in accordance with Section 01 33 00 “Document Management.”

B. Submit copies of required notices and reports to the Construction Manager as Product Data in accordance with Section 01 33 03 “Product Data.” Retain copies of these documents at the Site for review and inspection by the OPT or regulatory agencies at all times.

C. Submit copies of required notices to local, state, and federal authorities and any other entity as required by the General Permit and applicable Laws and Regulations.

D. Post a copy of required notices at the Site in a location where it is readily available for viewing by the general public and local, state, and federal authorities prior to starting construction activities and maintain the posting until completion of the construction activities.

E. Maintain copies of a schedule of major construction activities, inspection reports, and revision documentation with the SWPPP required under the General Permit.

F. Provide schedules in accordance with Paragraph 3.05.

1.03 QUALITY ASSURANCE

A. Comply with applicable requirements of all governing authorities having jurisdiction. The Specifications and the Drawings are not intended to be prescriptive but rather to convey

the intent to provide complete slope protection, erosion control, and stormwater pollution prevention for both the Owner's property and adjacent properties.

B. Perform Work to comply with “Best Practices” as established by the EPA or the local agency of jurisdiction.

C. Contractor must develop and implement a SWPPP in accordance with the General Permit prior to the beginning of construction activity.

D. Contractor assumes solely responsible for implementing, updating, and modifying the General Permit per Laws and Regulations for the SWPPP and Best Management Practices.

E. Stormwater pollution prevention measures must be established prior to the beginning of construction and maintained during the entire length of construction until final stabilization has been achieved for the area protected.

F. All land-disturbing activities must be planned and conducted to minimize the area to be exposed at any one time as well as time of exposure, off-site erosion, sedimentation, and adverse water quality impacts.

G. Surface water runoff originating upgrade of an exposed area must be managed to minimize erosion and sediment loss during the period of exposure.

H. Install measures to control both the velocity and rate of release so as to minimize erosion and sedimentation of the receiving water body (i.e. , ditch, channel, stream) in accordance with regulatory requirements and as directed by the OPT.

I. Periodically clean out and dispose of all sediment and other pollutants as necessary to maintain adequate treatment capacity of each pollution control feature. Clean out and properly dispose of all sediment and other stormwater pollutants at the time of completion of the Work.

1.04 JOB CONDITIONS, CODES AND ORDINANCES

A. Comply with the local codes and ordinances. If local codes and ordinances require more stringent or additional stormwater pollution prevention measures during construction beyond those required by state and federal Laws and Regulations, the Contractor must provide such measures at no additional cost.

1.05 STANDARDS

A. The applicable provisions of the following standards apply as if written here in their entirety:

1. ASTM International (ASTM):

ASTM D4632	Standard Test Method for Grab Breaking Load and Elongation of Geotextiles, 90 pounds
ASTM D4833	Standard Test Method for Index Puncture Resistance of Geotextiles, Geomembranes, and Related Products, 60 pounds
ASTM D3786	Standard Test Method for Hydraulic Bursting Strength of Textile Fabrics-Diaphragm Bursting Strength Tester Method, 280 psi
ASTM D4751	Standard Test Method for Determining Apparent Opening Size of a Geotextile, U.S. Sieve No. 70 (max) to No. 100 (min)

ASTM D4355	Standard Test Method for Deterioration of Geotextiles by Exposure to Light, Moisture and Heat in a Xenon Arc-Type Apparatus
ASTM D4318	Standard Test Methods for Liquid Limit, Plastic Limit, and Plasticity Index of Soils
ASTM D698	Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort

PART 2 - PRODUCTS

2.01 MATERIALS

A. All materials used for stormwater pollution prevention must meet the minimum design and specification requirements identified below for commonly used sediment loss prevention. The Contractor must use appropriate control devices to protect against stormwater pollution from construction site activities.

B. Erosion control blankets (ECBs) to hold seed and soil in place until vegetation is established on disturbed areas are subject to the following design criteria:

1. The type and class of erosion control mat must be specified as appropriate for the slope of the area to be protected, the flow rate (sheet flow on cut/fill slopes) or velocity (concentrated flow in swales) of stormwater runoff in contact with the ECB, and the anticipated length of service.

2. Erosion control blankets must meet the applicable Texas Department of Transportation (TxDOT) Minimum Performance Standards for TxDOT as provided in its Erosion Control Report and/or be listed on the most current annual Approved Products List for TxDOT applicable to TxDOT Item 169 Soil Retention Blanket and its Special Provisions.

C. Silt fences for perimeter controls located downstream of disturbed areas are subject to the following design criteria:

1. If 50 percent or less soil by weight passes the U.S. Standard sieve No. 200, select the apparent opening size (A.O.S.) to retain 85 percent of the soil.

2. If 85 percent or more of soil by weight passes the U.S. Standard sieve No. 200, silt fences must not be used unless the soil mass is evaluated and deemed suitable by a soil scientist or geotechnical engineer concerning the erodibility of the soil mass, dispersive characteristics, and the potential grain-size characteristics of the material that is likely to be eroded.

3. Silt fence fabric must meet the following minimum criteria:

a. Tensile Strength, ASTM D4632 Test Method for Grab Breaking Load and Elongation of Geotextiles, 90 pounds.

b. Puncture Rating, ASTM D4833 Test Method for Index Puncture Resistance of Geotextiles, Geomembranes, and Related Products, 60 pounds.

c. Mullen Burst Rating, ASTM D3786 Standard Test Method for Hydraulic Bursting Strength of Textile Fabrics-Diaphragm Bursting Strength Tester Method, 280 psi.

d. Apparent Opening Size, ASTM D4751 Test Method for Determining Apparent Opening Size of a Geotextile, U.S. Sieve No. 70 (max) to No. 100 (min).

e. Ultraviolet Resistance, ASTM D4355 Standard Test Method for Deterioration of Geotextiles by Exposure to Light, Moisture and Heat in a Xenon Arc-Type Apparatus. Minimum 70 percent.

4. Filter stone for an overflow structure must be 1-1/2-inch washed stone containing no fine material. Angular shaped stone is preferable to rounded shaped stone.

5. Fence posts must be galvanized steel or equivalent and may be T-section or L-section, 1.3 pounds per linear foot minimum, and 4 feet in length minimum. Wood posts may be used depending on anticipated length of service and provided they are 4 feet in length minimum and have a nominal cross-section of 2 inches by 4 inches for pine or 2 inches by 2 inches for hardwoods.

6. Silt fence must be supported by galvanized steel wire fence fabric as follows:

a. 4-inch by 4-inch mesh size, W1.4/1.4, minimum 14-gauge wire fence fabric;

b. Hog wire, 12-gauge wire, small openings installed at bottom of silt fence;

c. Standard 2-inch by 2-inch chain link fence fabric; or

d. Other welded or woven steel fabrics consisting of equal or smaller spacing as that listed herein and appropriate gauge wire to provide support.

D. Inlet protection used in new developments that include new inlets or roads with new curb inlets or during repairs to existing roadways are subject to the following design criteria:

1. Filter fabric protection must be designed and maintained in a manner similar to a silt fence.

2. Where applicable, filter fabric, posts, and wire backing must meet the material requirements specified in Paragraph 2.01.C.

3. Filter gravel must be 3/4-inch washed stone containing no fines. Angular shaped stone is preferable to rounded shapes.

4. Concrete blocks must be standard 8-inch by 8-inch by 16-inch concrete masonry units.

5. When organic filter tubes are used, the designer must specify the type of material to be used (or excluded) on a particular site:

a. Straw filter material must be Certified Weed Free Forage. The straw must be in good condition, air-dried, and not rotten or moldy.

b. Compost must conform to the requirements for Erosion Control Compost in TxDOT Special Specification 1001 Compost (2004). Compost may provide some oil and grease removal; however, the large percentage of fines in compost will result in less filtering and more ponding of stormwater.

c. Wood chips must be 100 percent untreated chips and free of inorganic debris, such as plastic, glass, metal, etc. Wood chip size must not be smaller than 1 inch and must not exceed 3 inches in diameter. Shavings must not be more than 5 percent of the total mass.

6. Bags used to secure inlet protection devices on pavement must be filled with aggregate, filter stone, or crushed rock that is less likely than sand to be washed into an inlet if the bag is broken. Filled bags must be 24 to 30 inches long, 16 to 18 inches wide, and 6 to 8 inches thick. Bags must be polypropylene, polyethylene, or polyamide woven fabric with a minimum unit weight of 4 ounces per square yard and meet the following criteria:

    a. Greater than 300 psi Mullen Burst Strength using ASTM D3786 Standard Test Method for Hydraulic Bursting Strength of Textile Fabrics-Diaphragm Bursting Strength Tester Method.

    b. Greater than 70 percent UV Stability using ASTM D4355 Standard Test Method for Deterioration of Geotextiles by Exposure to Light, Moisture, and Heat in a Xenon Arc Type Apparatus.

E. Stone outlet sediment traps (bermed or excavated) used in situations where flows are concentrated in a drainage swale or channel are subject to the following design criteria:

1. The embankment must be placed on geotextile fabric meeting the following minimum criteria:

    a. Tensile Strength, ASTM D4632 Text Method for Grab Breaking Load and Elongation of Geotextiles, 250 pounds.

    b. Puncture Rating, ASTM D4833 Test Method for Index Puncture Resistance of Geotextiles, Geomembranes, and Related Products, 135 pounds.

    c. Mullen Burst Rating, ASTM D3786 Standard Test Method for Hydraulic Bursting Strength of Textile Fabrics-Diaphragm Bursting Strength Tester Method, 420 psi.

    d. Apparent Opening Size, ASTM D4751 Test Method for Determining Apparent Opening Size of a Geotextile, U.S. Sieve No. 20 (max).

2. Fill placed to constrict the swale for construction of the excavated stone outlet sediment trap and fill placed for the berm in the bermed stone outlet sediment trap must consist of clay material, minimum Plasticity Index of 30, using ASTM D4318 Standard Test for Liquid Limit, Plastic Limit, and Plasticity Index of Soils.

3. The embankment must be comprised of well graded stone riprap with a size range of 6 to 12 inches in diameter.

F. Sediment basins used as treatment devices for sites with disturbed areas of 10 acres and larger that are part of a common drainage area are subject to the following design criteria:

1. The embankment must be constructed with clay soil, minimum Plasticity Index of 30 using ASTM D4318 Standard Test for Liquid Limit, Plastic Limit, and Plasticity Index of Soils.

2. Texas Administrative Code Title 30, Chapter 299 (30 TAC 299), Dams and Reservoirs, contains specific requirements for dams that:

    a. Have a height greater than or equal to 25 feet and a maximum storage capacity greater than or equal to 15 acre-feet;

    b. Have a height greater than 6 feet and a maximum storage capacity greater than or equal to 50 acre feet;

c. Are a high- or significant-hazard dam as defined in Chapter 299, regardless of height or maximum storage capacity; or

d. Are used as a pumped storage or terminal storage facility.

3. If the size of the detention basin meets or exceeds the above applicability, the design must be in accordance with state criteria, and the final construction Drawings and Specifications must be submitted to the TCEQ for review and approval.

G. Check dams used for long drainage swales or ditches to reduce erosive velocities are subject to the following design criteria:

1. Use geotextile filter fabric under check dams exceeding 12 inches in height. The fabric must meet the material specified for the Stone Outlet Sediment Trap discussed above.

2. Loose, unconfined soil, wood chips, compost, and other material that can float or be transported by runoff must not be used to construct check dams.

3. Sand bags must not be used for check dams, due to their propensity to break and release sand that is transported by the concentrated flow in the drainage swale or ditch.

4. Rock Check Dams:

a. Stone must be well graded with stone size ranging from 3 to 6 inches in diameter for a check dam height of 24 inches or less.

b. The stone size range for check dams greater than 24 inches is 4 to 8 inches in diameter.

5. Rock Bag Check Dams Bags:

a. Fill material should be pea gravel, filter stone or aggregate that is clean and free of deleterious material.

b. Bag material must comply with the requirements of Inlet Protection above.

6. Sack Gabion Check Dams:

a. Sack gabions must be wrapped in galvanized steel, woven wire mesh. The wire must be 20 gauge with 1-inch diameter, hexagonal openings.

b. Stone must be well graded with a minimum size range from 3 to 6 inches in diameter.

7. Organic Filter Tube Check Dams:

a. Filter material used within tubes to construct check dams must be limited to coir, straw, aspen fiber and other organic material with high cellulose content.

b. The material should be slow to decay or leach nutrients in standing water and comply with the requirements for Inlet Protection above.

H. Stabilized construction exits used for sites in which significant truck traffic occurs on a daily basis are subject to the following design criteria:

1. The construction exit material must be a minimum thickness of 6 inches. The stone or recycled concrete used must be 3 to 5 inches in size with little or no fines.

2. The geotextile fabric must meet the following minimum criteria:

    a. Tensile Strength, ASTM D4632 Test Method for Grab Breaking Load and Elongation of Geotextiles, 300 pounds.

    b. Puncture Strength, ASTM D4833 Test Method for Index Puncture Resistance of Geotextiles, Geomembranes, and Related Products, 120 pounds.

    c. Mullen Burst Rating, ASTM D3786 Standard Test Method for Hydraulic Bursting Strength of Textile Fabrics-Diaphragm Bursting Strength Tester Method, 600 psi.

    d. Apparent Opening Size, ASTM D4751 Test Method for Determining Apparent Opening Size of a Geotextile, U.S. Sieve No. 40 (max).

I. Alternative pollution prevention measures selected by the Contractor must be identified from one or more of the following reference sources, as appropriate for the region of the construction activity:

1. City of Austin Environmental Criteria Manual.

2. North Central Texas Council of Governments (NCTCOG) integrated Stormwater Management (iSWM) Design Manual for Construction.

3. Harris County/Harris County Flood Control District/City of Houston Stormwater Management Handbook for Construction Activities.

PART 3 - EXECUTION

3.01 PREPARATION

A. Prepare a SWPPP in accordance with applicable permit requirements for construction activity. Develop the SWPPP in conformance with the General Permit and any applicable local requirements.

B. Prepare and implement the SWPPP prior to the beginning of construction activity in accordance with local, state, and federal Laws and Regulations.

C. OPT may require Contractor to install stormwater pollution prevention devices and/or practices during construction in addition to those required under the approved SWPPP. Contractor must remain solely responsible for complying with all local, state, and federal Laws and Regulations.

3.02 INSTALLATION

A. Erosion control blankets to hold seed and soil in place until vegetation is established on disturbed areas are subject to the following installation criteria:

1. Prior to the installation of any erosion control matting, all rocks, dirt clods, stumps, roots, trash, and any other obstructions that would prevent the mat from lying in direct contact with the soil must be removed.

2. Anchor trenching must be located along the entire perimeter of the installation area, except for small areas with less than 2 percent slope.

3. Installation and anchoring must conform to the recommendations shown within the manufacturer's published literature for the erosion control blanket.

4. Anchors (staples) must be a minimum of 6 inches in length and 1 inch wide. They must be made of 11-gauge wire, or equivalent, unless the ECB is intended to remain in place with final stabilization and biodegrade.

5. Particular attention must be paid to joints and overlapping material. Overlap along the sides and at the ends of ECBs should be per the manufacturer's recommendations for site conditions and the type of ECB being installed. At a minimum, the end of each roll of ECB must overlap the next roll by 3 feet and the sides of rolls must overlap 4 inches.

6. After installation, check blankets for uniform contact with the soil, security of the lap joints, and flushness of the staples with the ground.

B. Silt fences for perimeter controls located downstream of disturbed areas are subject to the following installation criteria:

1. Construct fences along a line of constant elevation (along a contour line if possible).

2. Maximum drainage area must be 0.25 acres per 100 linear feet of silt fence.

3. Maximum flow to any 20-foot section of silt fence must be 1 cfs.

4. Maximum distance of flow to silt fence must be 200 feet or less. If the slope exceeds 10 percent, the flow distance must be less than 50 feet.

5. Maximum slope adjacent to the fence must be 2:1.

6. Stone overflow structures or other outlet control devices must be installed at all low points along the fence or spaced at approximately 300 feet if there is no apparent low point.

7. A 6-inch wide trench is to be cut 6 inches deep at the toe of the fence to allow the fabric to be laid below the surface and backfilled with compacted earth or gravel to prevent bypass of runoff under the fence. Fabric must overlap at abutting ends a minimum of 3 feet and must be joined such that no leakage or bypass occurs. If soil conditions prevent a minimum toe-in depth of 6 inches or installation of support post to depth of 12 inches, silt fences must not be used.

8. Sufficient room for the operation of sediment removal equipment must be provided between the silt fence and other obstructions in order to properly maintain the fence.

9. The last 10 feet (or more) at the ends of a line of silt fence must be turned upslope to prevent bypass of stormwater. Additional upslope runs of silt fence may be needed every 200 to 400 linear feet, depending on the traverse slope along the line of silt fence.

C. Inlet protection for new developments that include new inlets or roads with new curb inlets or during repairs to existing roadways are subject to the following installation criteria:

1. Maintain barricades, signs, and safety features around the Work in accordance with all provisions of the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD), when installing inlet protection on publicly traveled streets or in developed areas. Ensure that inlet protection is properly designed, installed, and maintained to avoid flooding of the roadway or adjacent properties and structures.

2. Maximum depth of flow must be 8 inches or less.

3. A 2-inch overflow gap or weir is required on all curb inlet protection devices.

4. Positive drainage is critical in the design of inlet protection. If overflow is not provided for at the inlet, excess flows must be routed through established swales, streets, or other watercourses to minimize damage due to flooding.
5. Filter Fabric Protection:
    a. Filter fabric protection is appropriate where the drainage area is less than 1 acre and the basin slope is less than 5 percent.
    b. Filter fabric, posts, and wire mesh must meet the material requirements specified in Paragraph **[2.01.C]**.
    c. A 6-inch wide trench is to be cut 6 inches deep at the toe of the fence to allow the fabric to be laid below the surface and backfilled with compacted earth or gravel. This entrenchment prevents any bypass of runoff under the fence.
    d. Stone overflow structures must be installed where flow to the inlet is concentrated and more than 1 cfs according to the criteria in Paragraph **[2.01]**.
6. Block and Gravel Protection (Curb and Drop Inlets):
    a. Concrete blocks are to be placed on their sides in a single row around the perimeter of the inlet, with ends abutting.
    b. Openings in the blocks should face outward, not upward. 1/2-inch by 1/2-inch wire mesh must then be placed over the outside face of the blocks covering the holes.
    c. Filter stone must then be piled against the wire mesh to the top of the blocks with the base of the stone being a minimum of 18 inches from the blocks.
    d. Alternatively, where loose stone is a concern (streets, etc.), the filter stone may be placed in appropriately sized geotextile fabric bags.
7. Excavated Impoundment Protection:
    a. Excavated impoundment protection is only applicable to drop inlets.
    b. It should not be applied to Y inlets because it will undermine the concrete pad surrounding the inlet opening. Nor can it be used for inlets on pavement.
    c. With this protection method, it is necessary to install weep holes to allow the impoundment to drain completely.
    d. The impoundment must be sized such that the volume of excavation is equal to or exceeds the runoff volume from the temporary control design storm (2-year, 24-hour) for the inlet's drainage area.
    e. The trap must have a minimum depth of 1 foot and a maximum depth of 2 feet as measured from the top of the inlet and must have side slopes of 2:1 or flatter.
8. Organic Filter Tube Protection (Curb and Drop Inlets):
    a. Organic filter tubes may be used on paved or unpaved surfaces. On paved surfaces, tubes must be secured in place by rock bags. On unpaved surfaces, the tubes must be embedded in the ground a minimum of 3 inches and staked at 4-foot spacing.

b. Designer must provide calculations and specify the diameter of tube to be used based on the inlet's drainage area and the flow rate of runoff to the inlet.

c. The minimum allowable diameter is 12 inches.

d. For curb protection, the diameter of the tube must be at least 2 inches less than the height of the inlet opening. The tube should not be allowed to block the entire opening, since it will clog.

e. The tube must be placed on 4-inch by 4-inch or 2-inch by 4-inch wire mesh to prevent the tube from sagging into the inlet. The tube should be long enough to extend a minimum of 12 inches past the curb opening on each side of the inlet.

D. Stone outlet sediment traps (excavated or bermed) for situations where flows are concentrated in a drainage swale or channel are subject to the following installation criteria:

1. The maximum drainage area contributing to the trap must be less than 10 acres for the excavated trap, and 5 acres or less for the bermed trap. For larger drainage areas a sediment basin must be used.

2. The minimum storage volume must be the volume of runoff from the temporary control design storm (2-year, 24-hour) for the sediment trap's drainage area.

3. The surface area of the design storage must be 1 percent of the area draining to the device.

4. The maximum embankment height must be 6 feet as measured from the toe of the slope on the downstream side.

5. Minimum width of the embankment at the top must be 2 feet.

6. Embankment slope must be 1:5:1 or flatter.

7. The embankment must have a depressed area to serve as the outlet with a minimum width of 4 feet.

8. A 6-inch minimum thickness layer of 1-1/2-inch filter stone must be placed on the upstream face of the embankment when stormwater runoff contains fine silt and clay particles.

9. The embankment must consist of stone riprap or a combination of compacted fill with stone riprap. The stone may be enclosed in wire mesh or a gabion basket and anchored to the channel bottom to prevent washing away.

10. Fill must be placed in 8-inch loose lifts (maximum) and compacted to 95 percent Standard Proctor Density at optimum moisture content using ASTM D698 Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort.

11. Geotextile fabric, covered with a layer of stone, must extend past the base of the embankment on the downstream side a minimum of 2 feet.

12. The outlet must be designed to have a minimum freeboard of 6 inches at design flow.

E. Sediment basins for treatment devices for sites with disturbed areas of 10 acres and larger that are part of a common drainage area are subject to the following installation criteria:

1. Design of the sediment basin should be coordinated with design of the permanent drainage infrastructure for the development. Sediment basin sizing and discharge volumes should be calculated using the **[NCTCOG iSWM Technical Manual] [specify other standard]** or similar technical manual in accordance with the design criteria of the locality where the basin is constructed.
2. Minimum capacity of the basin must be the calculated volume of runoff from a 2-year, 24-hour duration storm event plus sediment storage capacity of at least 1000 cubic feet.
3. The basin must be laid out such that the effective flow length to width ratio of the basin is a minimum of 4:1. The effectiveness of sediment basins may be increased by using baffles to prevent short-circuiting of flow through the basin.
4. Top width of the embankment must be determined by the Design Professional based on the total height of the embankment as measured from the toe of the slope on the downstream side.
5. Embankment side slopes must be 3:1 or flatter.
6. Clay soil for the embankment must be placed in 8-inch lifts and compacted to 95 percent Standard Proctor Density at optimum moisture content using ASTM D698 Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort.
7. The primary outlet must have a minimum design dewatering time of 36 hours for the temporary control design storm (2-year, 24-hour).
8. Whenever possible, the outlet must be designed to drain the basin in less than 72 hours to minimize the potential for breeding mosquitoes.
9. The basin's primary outlet and spillway must be sized to pass the difference between the conveyance storm (25-year, 24-hour) and the temporary control design storm without causing damage to the embankment and structures.
10. Unless infeasible, the primary outlet structure should withdraw water from the surface of the impounded water. Outlet structures that do this include surface skimmers, solid risers (non-perforated), flashboard risers, and weirs.
11. The outlet of the outfall pipe (barrel) must be stabilized with riprap or other materials designed using the conveyance storm flow rate and velocity. Velocity dissipation measures must be used to reduce outfall velocities in excess of 5 feet per second.
12. The outfall pipe through the embankment must be provided with anti-seep collars connected to the exterior of the pipe section or at a normal joint of the pipe material. The anti-seep collar material must be compatible with the pipe material used and must have a watertight bond to the exterior of the pipe section. The size and number of collars must be selected by the designer in accordance with the NCTCOG iSWM Technical Manual or similar technical manual in accordance with the design criteria of the locality where the basin is constructed.

13. Risers used to discharge high flows must be equipped with an anti-vortex device and trash rack.

14. Spillways must be constructed in undisturbed soil material (not fill) and must not be placed on the embankment that forms the basin.

F. Check dams for long drainage swales or ditches to reduce erosive velocities are subject to the following installation criteria:

1. Typically, the dam height should be between 9 inches and 36 inches, depending on the material of which they are made. The height of the check dam must always be less than one-third the depth of the channel.

2. Dams should be spaced such that the top of the downstream dam is at the same elevation as the toe of the upstream dam. On channel grades flatter than 0.4 percent, check dams should be placed at a distance that allows small pools to form between each check dam.

3. The top of the side of the check dam must be a minimum of 12 inches higher than the middle of the dam. In addition, the side of the dams must be embedded a minimum of 18 inches into the side of the drainage ditch, swale or channel to minimize the potential for flows to erode around the side of the dam.

4. Larger flows (greater than 2-year, 24-hour design storm) must pass the check dam without causing excessive upstream flooding.

5. Check dams should be used in conjunction with other sediment reduction techniques prior to releasing flow off-site.

6. Rock Check Dams: Rock check dams must have a minimum top width of 2 feet with side slopes of 2:1 or flatter.

7. Rock Bag Check Dams:

   a. Rock bag check dams should have a minimum top width of 16 inches.

   b. Bag length must be 24 to 30 inches, width must be 16 to 18 inches, and thickness must be 6 to 8 inches and having a minimum weight of 40 pounds.

   c. Minimum rock bag dam height of 12 inches would consist of one row of bags stacked on top of two rows of bag. The dam must always be one more row wide than it is high, stacked pyramid fashion.

   d. PVC pipes may be installed through the dam to allow for controlled flow through the dam. Pipe should be schedule 40 or heavier polyvinyl chloride (PVC) having a nominal internal diameter of 2 inches.

8. Sack Gabion Check Dams:

   a. Sack gabion check dams may be used in channels with a contributing drainage area of 5 acres or less.

   b. Wire mesh must be one piece, wrapped around the rock, and secured to itself on the downstream side using wire ties or hog rings.

   c. Sack gabions must be staked with 3/4-inch rebar at a maximum spacing of 3 feet. Each wire sack must have a minimum of two stakes.

9. Organic Filter Tube Check Dams:

    a. Organic filter tubes may be used as check dams in channels with a contributing drainage area of 5 acres or less.

    b. Organic filter tubes must be a minimum of 12 inches in diameter.

    c. Staking of filter tubes must be at a maximum of 4-foot spacing and must alternate through the tube and on the downstream face of the tube.

G. Stabilized construction exits for sites in which significant truck traffic occurs on a daily basis are subject to the following installation criteria:

1. Limit site access to one route during construction, if possible; two routes for linear and larger projects.

2. Prevent traffic from avoiding or shortcutting the full length of the construction exit by installing barriers. Barriers may consist of silt fence, construction safety fencing, or similar barriers.

3. Design the access point(s) to be at the upslope side of the construction site. Do not place construction access at the lowest point on the construction site.

4. Stabilized Construction Exits are to be constructed such that drainage across the entrance is directed to a controlled, stabilized outlet on-site with provisions for storage, proper filtration, and removal of wash water.

5. The exit must be sloped away from the paved surface so that stormwater is not allowed to leave the Site onto roadways.

6. Minimum width of exit must be 15 feet.

7. Vehicles must not be permitted to track or drop sediment onto paved roads, streets, or parking lots. When necessary, vehicles must be cleaned to remove sediment prior to exit onto paved areas. When washing is required, it must be done on a constructed wheel wash facility that drains into an approved sediment trap or sediment basin or other sedimentation/filtration device.

8. Minimum dimensions for the exit must be as follows:

Tract Area	Min. Width of Exit	Min. Length of Exit
<1 Acre	15 feet	20 feet
≥ 1 acre but <5 Acres	25 feet	50 feet
≥5 Acres	30 feet	50 feet

H. Install pollution control devices in a manner consistent with their designed intent.

3.03 MAINTENANCE

A. Maintain pollution prevention control structures and procedures in full working order at all times during construction. This must include any necessary repair or replacement of items which have become damaged or ineffective. Remove sediment and other pollutants which accumulate in pollution control devices as necessary to maintain the intended design efficiency for the pollution prevention measure.

B. Dispose properly of trash, debris, and other pollutants.

C. Place sediment material in approved earth spoil areas or return the sediment material to the area from which it eroded.

D. Maintain pollution prevention structures and procedures until construction is complete for the area protected and until the Site achieves final stabilization. Unless more stringently defined by local, state, or federal requirements, final stabilization is defined as achieving 70 percent of background vegetative cover or placement of permanent cover, such as concrete or asphalt.

E. Upon completion of construction and achievement of final stabilization, properly remove the temporary pollutant control structures and complete the area as indicated. Pollution control devices made of organic materials designed to degrade naturally in place will not require removal, unless specifically required by the OPT.

F. Erosion control blankets must be inspected regularly (at least as often as required by the General Permit) for bare spots caused by weather related events. Missing or loosened blankets must be replaced or re-anchored. Also check for excess sediment deposited from runoff. Remove sediment and/or replace blanket as necessary. In addition, determine the source of excess sediment and implement appropriate Best Management Practices to control the erosion.

G. Silt fences must be inspected regularly (at least as often as required by the General Permit) for buildup of excess sediment, undercutting, sags, and other failures. Sediment should be removed when it reaches approximately one-half the height of the fence. In addition, determine the source of excess sediment and implement appropriate Best Management Practices to control the erosion. If the fabric becomes damaged or clogged, it must be repaired or replaced as necessary.

H. Inlet protection must be inspected regularly (at least as often as required by the General Permit). Floatable debris and other trash caught by the inlet protection should be removed after each storm event. Sediment should also be removed from curb inlet protection after each storm event because of the limited storage area associated with curb inlets. Sediment collected at inlet protection should be removed before it reaches half the height of the protection device. Sediment should be removed from inlets with excavated impoundment protection before the volume of the excavation is reduced by 50 percent. In addition, the weep holes should be checked and kept clear of blockage. Concrete blocks, 2-inch by 4-inch boards, stakes, and other materials used to construct inlet protection should be checked for damaged and repaired or replaced if damaged. When filter fabric or organic filter tubes are used, they should be cleaned or replaced when the material becomes clogged. For systems using filter stone, when the filter stone becomes clogged with sediment, the stones must be pulled away from the inlet and cleaned or replaced. Because of the potential for inlet protection to divert runoff or cause localized flooding, remove inlet protection as soon as the drainage area contributing runoff to the inlet is stabilized. Ensure that all inlet protection devices are removed at the end of the construction.

I. The stone outlet sediment trap should be inspected regularly (at least as often as required by the General Permit) to check for clogging of the void spaces between stones. If the filter stone appears to be clogged, such that the basin will not completely drain, then the filter stone will require maintenance. If the filter stone is not completely clogged it may be raked with a garden rake to allow the water to release from the basin. If filter stone is completely clogged with mud and sediment, then the filter stone will have to be removed and

replaced. Failure to keep the filter stone material properly maintained will lead to clogging of the stone riprap embankment. When this occurs, the entire stone rip-rap structure will need to be replaced. If the aggregate appears to be silted in such that efficiency is diminished, the stone should be replaced. Trash and debris should be removed from the trap after each storm event to prevent it from plugging the rock. Deposited sediment must be removed before the storage capacity is decreased by one-third, or sediment has reached a depth of 1 foot, whichever is less. The removed sediment must be stockpiled or redistributed in areas that are protected with erosion and sediment controls.

J. Sediment basins should be inspected regularly (at least as often as required by the General Permit) to check for damage and to ensure that obstructions are not diminishing the effectiveness of the structure. Sediment must be removed and the basin must be re-graded to its original dimensions when the sediment storage capacity of the impoundment has been reduced by 20 percent. The removed sediment may be stockpiled or redistributed on-site in areas that are protected by erosion and sediment controls. Inspect temporary stabilization of the embankment and graded basin and the velocity dissipaters at the outlet and spillway for signs of erosion. Repair any eroded areas that are found. Install additional erosion controls if erosion is frequently evident.

K. Check dams should be inspected regularly (at least as often as required by the General Permit). Silt must be removed when it reaches approximately one-third the height of the dam or 12 inches, whichever is less. Inspectors should monitor the edges of the dam where it meets the sides of the drainage ditch, swale, or channel for evidence of erosion due to bypass or high flows. Eroded areas must be repaired. If erosion continues to be a problem, modifications to the check dam or additional controls are needed. Care must be used when taking out rock check dams in order to remove as much rock as possible. Loose rock can create an extreme hazard during mowing operations once the area has been stabilized.

L. Stabilized construction exits should be inspected regularly (at least as often as required by the General Permit). The stabilized construction exit must be maintained in a condition that prevents tracking or flow of sediment onto paved surfaces. Periodic re-grading and top dressing with additional stone must be done to keep the efficiency of the exit from diminishing. The rock must be re-graded when ruts appear. Additional rock must be added when soil is showing through the rock surface. Additional controls are needed if inspections reveal a properly installed and maintained exit, but tracking of soil outside the construction area is still evident. Additional controls may be daily sweeping of all soil spilled, dropped, or tracked onto public rights-of-way or the installation of a wheel cleaning system.

3.04 FIELD QUALITY CONTROL

A. In the event of conflict between the specified requirements and stormwater pollution control laws, rules, or regulations or other local, state, or federal agencies, the more restrictive laws, rules, or regulations will apply.

3.05 SCHEDULES

A. Prior to start of construction, submit schedules to the OPT for accomplishment of temporary and permanent erosion control work in connection with required clearing and grubbing, grading, construction, and paving. Include a proposed method of erosion and

dust control on haul roads and borrow pits and a plan for disposal of waste materials in the submittal.

END OF SECTION

01 60 00 PRODUCT REQUIREMENTS

PART 1 - GENERAL

1.01 SUMMARY

A. Provide products for this Project that comply with the requirements of this Section. Specific requirements of the detailed equipment specifications govern in the case of a conflict with the requirements of this Section.

B. Comply with applicable specifications and standards.

1.02 DOCUMENTATION

Provide documents in accordance with the Contract Documents.

1.03 QUALITY ASSURANCE

A. Design Criteria:

1. Provide products designed for structural stability and operational capability.

2. Provide members designed to withstand all loads imposed by installation, erection, and operation of the product without deformation, failure, or adversely affecting the operational requirements of the product. Size and strength of materials for structural members are specified as minimums only.

3. Design mechanical and electrical components for all loads, currents, stresses, and wear imposed by startup and normal operations of the equipment without deformation, failure, or adversely affecting the operation of the unit. Mechanical and electrical components specified for equipment are specified as the minimum acceptable for the equipment.

B. Coordination:

1. Provide coordination of the entire Project, including verification that structures, piping, and equipment components to be furnished and installed for this Project are compatible.

2. Determine that the equipment furnished for this Project is compatible with the requirements of the Contract Documents and with the equipment and materials furnished by others.

3. Provide electrical components for equipment that comply with all provisions of the Contract Documents.

4. Apply protective coatings and paints to equipment in the shop that are fully compatible with the final coatings to be field applied in accordance with the Contract Documents.

C. Adapting Substitute Products:

1. The Drawings and Specifications are prepared for the specified products. Make modifications to incorporate the products into the Project if a substitution is requested

for a product is and approved in accordance with Section 01 26 00 “Change Management.”

2. Do not provide a product with a physical size that exceeds the available space. Consideration may be given to the acceptance of these products or equipment if the Contractor assumes all costs necessary to incorporate the item and the OPT approves such revisions.

3. Coordinate electrical requirements for the products to be installed in the Project, including revisions in electrical equipment components wiring and other elements necessary to incorporate the component.

1.04 STANDARDS

A. The applicable industry standards referenced in the Specifications apply as if written here in their entirety.

B. Provide equipment manufactured using structural and miscellaneous fabricated steel conforming to the standards of the American Institute of Steel Construction, except where indicated otherwise.

1.05 WARRANTIES AND GUARANTEES

A. Normal warranty provisions are as stated in the General Conditions.

B. Correct Defective Work under the provisions of the General Conditions.

C. Provide warranties and guarantees for periods as defined in the Contract Documents. Individual Sections of the Specifications may have more stringent warranty requirements than stated in the General Conditions. The most stringent warranty will apply in the event of conflicts within the Contract Documents.

D. The Contract Documents may require special warranties that guarantee performance at a specified capacity, power consumption, efficiency, or other operating parameter. Correct defects that prevent products from meeting the specified performance parameters. The requirements of the special warranty that guarantee performance will be satisfied when the specified performance parameters have been met for a period of 1 calendar year of operation, unless Owner elects to accept Defective Work under the provisions of the General Conditions.

E. The Contract Documents may require special warranties for periods extending beyond the one-year correction period specified in the General Conditions. The full warranty provisions and requirements for correction of Defective Work stated in the General Conditions apply throughout the extended warranty period.

F. Provide a warranty bond to provide the same protection as the Contractor's performance bond for extended special warranties. The warranty bond will become effective on the day the performance bond expires which is 1 year after the date of final payment per the General Conditions. The warranty bond will remain in effect until the extended warranty period has expired.

G. In the event that products are repaired, modified, or replaced under the warranty bond, then the warranty period will continue on the date of completion of these repairs for a period of 6 months or until the end of the original warranty period, whichever is later. In no

event will the warranty period extend more than 6 months beyond the end of the original warranty period.

PART 2 - PRODUCTS

2.01 MATERIALS

A. Provide products according to normally accepted engineering and shop practices, except where a higher standard of quality is required by the Contract Documents.

B. Manufacture like parts of duplicate units to standard sizes and gages that are interchangeable.

C. Two or more items of the same kind are to be identical and made by the same Supplier.

D. Provide products suitable for the intended service.

E. Adhere to the equipment capacities, sizes, and dimensions indicated in the Contract Documents.

F. Do not use products for any purpose other than that for which they were designed.

G. Provide new products. Do not provide equipment that has been in service at any time prior to delivery except for testing in accordance with the Contract Documents.

H. Provide materials suitable for service conditions.

I. Provide iron castings that are tough, close grained gray iron free from blowholes, flaws, or excessive shrinkage and that conform to ASTM A48.

J. Design structural members for shock or vibratory loads.

K. Provide steel that is at least 1/4 inch thick for all elements that will be submerged or subject to splashing all or part of the time during normal operation of the equipment. Chamfer or grind all edges to eliminate sharp exposed edges.

2.02 EQUIPMENT APPURTENANCES

A. Provide a safety guard covering all sides on belt or chain drives, fan blades, couplings, and other moving or rotating parts:

1. Fabricate safety guards from 16 US gauge or heavier galvanized or aluminum clad sheet steel or 1/2-inch mesh galvanized expanded metal;

2. Design guards for easy installation and removal;

3. Provide galvanized supports and accessories for each guard;

4. Provide stainless steel bolts and hardware; and

5. Provide safety guards designed to prevent the entrance of rain and dripping water in outdoor locations.

2.03 ANCHOR BOLTS

A. Provide suitable anchor bolts for each product.

B. Provide anchor bolts with templates or setting drawings in time to permit casting the anchor bolts in the concrete when concrete is placed.

C. Provide two nuts for each bolt.

D. Provide anchor bolts for products mounted on baseplates that are long enough to permit 1-1/2 inches of grout beneath the baseplate and to provide adequate anchorage into structural concrete. Bolts must be long enough to provide full nut engagement and leave three threads exposed. Housekeeping pads are not structural concrete.

E. Provide stainless steel anchor bolts, nuts, and washers.

2.04 SPECIAL TOOLS AND ACCESSORIES

A. Furnish tools, instruments, lifting and handling devices, and accessories necessary for proper maintenance and adjustment that are available only from the manufacturer or are not commonly available.

2.05 EQUIPMENT IDENTIFICATION PLAQUES

Provide a plaque for each piece of equipment in accordance with Section 40 05 53 "Identification for Process Piping and Equipment."

2.06 LUBRICATION SYSTEMS FOR EQUIPMENT

A. Provide equipment lubricated by systems which:

1. Require attention no more frequently than weekly during continuous operation.

2. Do not require attention during startup or shut down.

3. Do not waste lubricants.

B. Provide lubricants to fill lubricant reservoirs and to replace lubricant consumed during testing, startup, and operation prior to acceptance of equipment by the Owner.

PART 3 - EXECUTION

3.01 INSTALLATION

Install equipment including equipment pre-selected or furnished by the Owner. Assume responsibility for proper installation, startup, and making the necessary adjustments so that the equipment is placed in proper operating condition per Section 01 75 00 "Starting and Adjusting."

3.02 LUBRICATION

Lubricate all products provided or installed for this Project, including products furnished by the Owner, per the manufacturer's written recommendations until the product is accepted by the Owner.

END OF SECTION

01 70 00 EXECUTION AND CLOSEOUT REQUIREMENTS

PART 1 - GENERAL

1.01 SUMMARY

A. Comply with requirements of the General Conditions and specified administrative procedures in closing out the Contract.

1.02 DOCUMENTATION

A. Submit affidavits and releases on forms provided by the Construction Manager through the PMIS.

1.03 SUBSTANTIAL COMPLETION

A. The following requirements must be met for the Project or a designated portion of the Work to be Substantially Complete per the General Conditions:

1. Work must be fully functional and able to operate in accordance with the Contract Documents without special or extraordinary efforts on the part of the Owner.

2. Refer to section 00 73 00 “Supplemental Conditions” for the definition of substantial completion.

3. Performance Acceptance Testing (PAT) must be complete and indicated compliance with the requirements of the Contract Documents.

4. Operation and maintenance manuals must be approved and operator training conducted to allow the Owner to assume responsibility for operations.

B. Conduct inspections with superintendent, Subcontractors, and Suppliers for the Work or a designated portion of the Work prior to calling for a Substantial Completion inspection by the OPT. Create a list of deficiencies in the Work that must be completed for the Project to qualify for Substantial Completion. Review the list with the Construction Manager or the designated member of the OPT. The Construction Manager or the designated member of the OPT may assist the Contractor with this effort; however, it is the Contractor’s responsibility to create and manage this list of deficiencies until corrections are made.

C. Correct the identified deficiencies prior to calling for a Substantial Completion inspection.

D. Notify the Construction Manager that the Work or a designated portion of the Work is Substantially Complete per the General Conditions. Include a list of the items remaining to be completed or corrected before the Project will be considered for Final Completion.

E. OPT will visit the Site to observe the Work within a reasonable time after notification is received to determine the status of the Project.

F. Construction Manager will notify the Contractor that the Work is either Substantially Complete or that additional Work must be performed before the Project will be considered Substantially Complete.

1. Construction Manager will notify the Contractor of items that must be completed before the Project will be considered Substantially Complete.

2. Correct the noted deficiencies in the Work.
3. Notify the Construction Manager when the items of Work in the Construction Manager's notice have been completed.
4. OPT will revisit the Site and repeat the process.
5. Construction Manager will issue a Certificate of Substantial Completion to the Contractor when the OPT considers the Project to be Substantially Complete. The certificate will include a tentative list of items to be corrected before Final Payment will be recommended.
6. Review the list and notify the Construction Manager of any objections to items on the list within 10 days after receiving the Certificate of Substantial Completion.

1.04 TRANSFER OF UTILITIES

A. Transfer utilities to the Owner when the Certificate of Substantial Completion has been issued.

B. Submit final meter readings for utilities and similar data as of the date the Owner occupied the Work.

1.05 CLOSEOUT REQUIREMENTS

A. Provide the following before Final Completion:
1. Record Documents per Section 01 31 13 "Project Coordination";
2. Keys and keying schedule;
3. Warranties, bonds, and service agreements;
4. Equipment Installation Reports;
5. Shop Drawings, Product Data, operation and maintenance manuals, and other documentation required by the Contract Documents;
6. Specified spare parts and special tools;
7. Certificates of occupancy, operating certificates, or other similar releases required to allow the Owner unrestricted use of the Work and access to services and utilities;
8. Evidence of continuing insurance and bond coverage as required by the Contract Documents; and
9. Final videos and photographs per Section 01 33 06 "Graphic Documentation."
10. Closeout documentation required by the TWDB.

1.06 WARRANTIES, BONDS, AND SERVICES AGREEMENTS

A. Provide warranties, bonds, and service agreements required by Section 01 33 00 "Document Management" or by the individual Sections of the Specifications.

B. The date for the start of warranties, bonds, and service agreements is established per the General Conditions.

C. Compile warranties, bonds, and service agreements and review these documents for compliance with the Contract Documents.

1. Each document is to be signed by the respective Supplier or Subcontractor.

2. Each document is to include:

a. The product or Work item description;

b. The firm name, with the name of the principal, address, and telephone number;

c. Scope of warranty, bond, or services agreement;

d. Date, duration, and expiration date for each warranty bond and service agreement;

e. Procedures to be followed in the event of a failure; and

f. Specific instances that might invalidate the warranty or bond.

D. Submit digital copies of the documents to the Construction Manager for review.

E. Submit warranties, bonds, and services agreements within 10 days after equipment or components placed in service.

1.07 FINAL COMPLETION

A. Conduct inspections with Superintendent, Subcontractors, and Suppliers prior to calling for a Final Completion inspection by the OPT. Create a list of deficiencies in the Work that must be completed for the Project to qualify for the Final Completion inspection. Review the list with the Construction Manager or the designated member of the OPT. The Construction Manager or the designated member of the OPT may assist the Contractor with this effort; however, it is the Contractor's responsibility to create and manage this list of deficiencies until corrections are made.

B. Identify, list, and correct deficiencies prior to calling for a Final Completion inspection. The Project at the call for Final Completion represents the Contractor's interpretation of a project completed in conformance with the Contract Documents and reflects the Contractor's representation of a quality project meeting the Owner's expectations.

C. Notify the Construction Manager when:

1. Work has been completed and complies with the Contract Documents;

2. Equipment and systems have been tested per the Contract Documents and are fully operational;

3. Final operation and maintenance manuals have been provided to the Owner and all operator training has been completed;

4. Specified spare parts and special tools have been provided;

5. Work is complete and ready for final inspection;

6. Final documentation for all outstanding Modifications and Claims (other than those listed on the Certificate of Final Completion) have been processed and are ready for incorporation into the final Application for Payment; and

7. Closeout requirements in Paragraph 1.05 have been completed.

D. OPT will visit the Site to determine if the Project is complete and ready for final payment within a reasonable time after the notice is received.

E. Construction Manager will notify the Contractor that the Project is complete or will notify the Contractor that Work is Defective.

F. Take immediate steps to correct Defective Work. Notify the Construction Manager when Defective Work has corrected. OPT will visit the Site to determine if the Project is complete and the Work is acceptable. Construction Manager will issue a Certificate of Final Completion to the Contractor when the Project is complete or will notify the Contractor that Work is Defective.

G. Submit the request for final payment with closeout documentation described in Paragraph 1.06 if notified that the Project is complete and the Work is acceptable.

1.08 REINSPECTION FEES

A. Owner may impose a set-off against the Application for Payment in accordance with the General Conditions to compensate the OPT for additional visits to the Project if additional Work is required.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 74 23 FINAL CLEANING

PART 1 - GENERAL

1.01 SUMMARY

Perform a thorough cleaning of the Site, buildings, or other structures prior to Owner occupancy of the buildings, and prior to Final Completion. Leave the Project clean and ready for occupancy.

1.02 DOCUMENTATION

Provide data for maintenance per Section 01 33 04 “Operation and Maintenance Data.”

1.03 QUALITY CONTROL

Use experienced workmen or professional cleaners for final cleaning.

PART 2 - PRODUCTS

2.01 MATERIALS

A. Furnish the labor and products needed for cleaning and finishing as recommended by the manufacturer of the surface material being cleaned.

B. Use cleaning products only on the surfaces recommended by the Supplier.

C. Use only those cleaning products which will not create hazards to health or property and which will not damage surfaces.

PART 3 - EXECUTION

3.01 FINAL CLEANING

A. Thoroughly clean the entire Site and make ready for occupancy.

1. Remove construction debris, boxes, and trash from the Site.
2. Remove construction storage sheds and field offices.
3. Restore grade to match surrounding condition and remove excess dirt.
4. Sweep all drives and parking lots clean of dirt and debris. Use water trucks or hose down paved site to like new appearance.

B. Remove oil, grease, paint drippings, and other contaminants from foundations.

C. Spot paint nicks and other damage. Touch up damaged surfaces on factory finished equipment using special paint furnished by the manufacturer.

D. Remove labels and adhesive from conduits, piping and equipment.

E. Remove dirt, oil, grease, dust, and other contaminants from floors, equipment, and apparatus in mechanical and electrical equipment.

F. Broom clean exterior paved surfaces and rake clean other surfaces of the grounds.

G. Clean and polish all electrical equipment and exposed conduits. Remove paint overspray. Provide a blemish free appearance on all exposed equipment and conduits.

END OF SECTION

01 75 00 STARTING AND ADJUSTING

PART 1 - GENERAL

1.01 SUMMARY

A. Provide step-by-step procedures for starting provided systems, including equipment, pumps, and processes.

B. Provide pre-startup inspections by equipment manufacturers.

C. Place each system in service and operate the system to prove performance and to provide for initial correction of defects in workmanship, calibration, and operation.

D. Provide for initial maintenance and operation.

E. Include costs for starting and adjusting provided by manufacturer's representative in the Cost of Work for the equipment package.

F. Owner will provide chemicals, if any, required for continued operations.

1.02 STANDARDS

Comply with the specified standards associated with the testing or startup of equipment.

1.03 DOCUMENTATION

Provide the following documents in accordance with Section 01 33 00 "Document Management":

A. A Plan of Action for testing, checking, and starting equipment as Product Data per Section 01 31 13 "Project Coordination."

B. Equipment Installation Reports on the form provided by the Construction Manager certifying that the equipment and related appurtenances have been thoroughly examined and approved for startup and operation.

C. Operation and maintenance manuals per Section 01 33 04 "Operation and Maintenance Data." Preliminary operation and maintenance data must be approved before installation, testing, and initial operation of equipment or providing training required by Section 01 79 00 "Training of Operation and Maintenance Personnel."

1.04 SPECIAL JOB CONDITIONS

A. Do not start or test any equipment until the complete unit has been installed and thoroughly checked.

B. Provide the services of a qualified representative of the manufacturer to attend the tests and startup procedures as required by this Section.

C. Do not start or test any equipment until the preliminary operation and maintenance manual per Section 01 33 04 "Operation and Maintenance Data" has been approved.

PART 2 - PRODUCTS

2.01 TESTING INSTRUMENTATION

Provide new instrumentation and testing devices needed to conduct tests for maintenance and operation as recommended in the operation and maintenance manuals. This equipment is to become the property of the Owner and transferred in good working order as a spare part at Substantial Completion. This equipment is to be calibrated and ready for use during the startup procedure and for training provided in accordance with Section 01 79 00 “Training of Operation and Maintenance Personnel.”

PART 3 - EXECUTION

3.01 SERVICES OF MANUFACTURER’S REPRESENTATIVES

A. Provide the services of experienced and technically competent representatives of the manufacturer for inspections, tests, supervision of installation, training, and assistance with placing equipment in operation.

B. Perform installation, adjustment, and testing of the equipment under the direct supervision of the manufacturer’s representative where specified. Certify that the equipment and related appurtenances have been thoroughly examined and approved for startup and operation in the Equipment Installation Reports.

C. Provide on-site services as necessary for proper and trouble free operation of the equipment.

3.02 INSPECTION AND STARTUP

Inspect equipment prior to placing any equipment or system into operation. Make adjustments as necessary for proper operation. Do not start or test any apparatus until the complete unit has been installed and thoroughly checked.

A. Check for adequate and proper lubrication.

B. Determine that parts or components are free from undue stress from structural members, piping, or anchorage.

C. Adjust equipment for proper balance and operations.

D. Determine that vibrations are within acceptable limits.

E. Determine that equipment operates properly under full load conditions.

F. Determine that the equipment is in true alignment.

G. Ensure that the proper procedure is employed in startup of systems.

3.03 STARTING REQUIREMENTS

Refer to the individual Specification Sections for specific startup procedures or other requirements.

3.04 INITIAL OPERATION

A. Start, test, and place equipment and systems into operation for 30 days to allow the OPT to observe the operation and overall performance of the equipment and to determine that controls function as intended.

B. Operate equipment which is used on a limited or part-time basis in the presence of the OPT for a period long enough to demonstrate that controls function as specified.

C. Perform acceptance test as specified in individual Specification Sections. Demonstrate that equipment and systems meet the specified performance criteria.

D. Equipment and systems may be considered as substantially complete at the end of this initial operation period if the equipment is placed in continuous beneficial use by the Owner, unless specifically stated otherwise in the individual equipment Specifications.

3.05 INITIAL MAINTENANCE

A. Maintain equipment in accordance with the operation and maintenance manuals until Project is substantially complete and provisions have been made by the Owner for accepting responsibility for equipment operation in accordance with the General Conditions.

B. Service equipment in accordance with the operation and maintenance manuals immediately before releasing the equipment to the Owner.

END OF SECTION

01 79 00 TRAINING OF OPERATION AND MAINTENANCE PERSONNEL

PART 1 - GENERAL

1.01 SUMMARY

A. Provide services of Supplier's operation and maintenance training specialists to instruct Owner's personnel in recommended operation and maintenance procedures for equipment furnished. Details for training may be established in the specifications for that equipment.

B. Provide a combination of classroom and hands on training.

C. Training may be conducted at Contractor's or Supplier's facilities provided Contractor pays for travel, lodging, and per diem costs of the Owner.

D. Record training sessions on video and submit to the Owner on a flash drive in a format playable in Windows Media Player for Owner's later use in instructing Owner's personnel. Include this recording as part of the final operation and maintenance manual. Provide legal releases or pay additional fees required to allow training by the manufacturer to be recorded.

E. Include the cost for training and startup in the Cost of the Work for each equipment package.

1.02 DOCUMENTATION

A. Provide documentation in accordance with Section 01 33 00 "Document Management" and include:

1. Equipment Installation Reports in accordance with Section 01 75 00 "Starting and Adjusting" on forms provided by the Construction Manager;

2. A lesson plan for training in accordance with Paragraph 3.01.C;

3. Credentials of Supplier's proposed operation and maintenance instructors demonstrating compliance with requirements of Paragraph 1.04; and

4. Operation and maintenance manuals per Section 01 33 04 "Operation and Maintenance Data." Preliminary operation and maintenance data must be approved before installation, testing, and initial operation of equipment or providing training required by the Section.

1.03 SCHEDULING OF TRAINING

A. Coordinate training services with startup and initial operation of equipment on days and times Owner is available.

B. Training may be required outside of normal business hours to accommodate schedules of operation and maintenance personnel.

C. Provide training of Owner's personnel after acceptable preliminary operation and maintenance manuals have been approved.

D. Coordinate training with equipment startup and testing and availability of Owner's personnel.

E. Provide a proposed training schedule for review and acceptance by OPT showing all training required in the Contract Documents. Demonstrate compliance with specified training requirements relative to number of hours of training, number of training sessions, and scheduling.

F. Submit initial training schedule at least 60 days before scheduled start of first training session. Submit final training schedule, incorporating revisions in accordance with OPT's comments, no later than 30 days prior to starting the first training session.

G. Owner reserves the right to modify personnel availability for training in accordance with process or emergency needs.

H. Schedule for training is to be approved by Owner.

1. Schedule training and startup operations for no more than one piece of equipment or system at a time.

2. Owner may require re-scheduling of training if operations personnel are not available for training on a scheduled date.

3. Provide a minimum of 2 weeks' notice if training must be rescheduled.

4. Training is to be limited to 24 hours per week.

5. Time required for training is to be included in the development of the Project schedule.

I. Schedule and coordinate training for equipment or systems which depend upon other equipment or systems for proper operation so that trainees can be made familiar with the operation and maintenance of the entire operating system.

1.04 SERVICES OF SUPPLIER'S REPRESENTATIVE

A. Supplier's instructors must be factory-trained by the equipment manufacturer.

B. Instructors must have knowledge of the theory of operation and practical experience with the equipment or system.

C. Instructors must be proficient and experienced in conducting training of the type required and must have successfully conducted similar training courses.

D. Qualifications of instructors are subject to acceptance by OPT. Provide services of replacement instructor with acceptable qualifications if OPT does not accept qualifications of proposed instructor. Include each instructor's résumé and specific details of instructor's operating, maintenance, and training experience relative to the specific equipment for which instructor will provide training to demonstrate their qualifications.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION

3.01 OPERATOR TRAINING

A. Provide classroom and hands-on training of the care and operation of the equipment to the Owner's personnel.

B. Provide training in adequate detail to ensure that the trainees who complete the program will be qualified and capable of operating and maintaining the equipment, products, and systems provided.

C. Provide a training plan that indicates the schedule and sequence of the training programs. The training plan is to include for each course:

1. Number of hours for the course;
2. Agenda and narrative description, including the defined objectives for each lesson;
3. Draft copy of training handbooks;
4. A descriptive listing of suggested reference publications;
5. Audio-visual equipment required for training; and
6. Type and number of tools or test equipment required for each training session.

D. Provide and use training aids to complement the instruction and enhance learning.

1. Provide training handbooks for use in both the classroom and the hands-on phases of training for each course.
2. Instructional materials must include references to the operation and maintenance manuals and identify and explain the use of the manual.
3. Provide a copy of all audio/visual training materials used in the presentations to the Owner.

E. Operations training is to include:

1. Orientation to provide an overview of system/subsystem configuration and operation;
2. Terminology, nomenclature, and display symbols;
3. Operations theory;
4. Equipment appearance, functions, concepts, and operation;
5. Operating modes, practices, and procedures under normal, diminished, and emergency conditions;
6. Startup and shutdown procedures;
7. Safety precautions;
8. On-the-job operating experience for monitoring functions, supervisory, or command activities. Include functions and activities associated with diminished operating modes, failure recognition, and responses to system/subsystem and recovery procedures; and
9. Content and use of operation and maintenance manuals and related reference materials.

F. Provide training for performing on-site routine, preventive, and remedial maintenance of the equipment or system. Maintenance training is to include:

1. Orientation to provide an overview of system/subsystem concept, configuration, and operation;
2. Operations theory and interfaces;

3. Instructions necessary to ensure a basic theoretical and practical understanding of equipment appearance, layout, and functions;
4. Safety precautions;
5. Use of standard and special tools and test equipment;
6. Adjustment, calibration, and use of related test equipment;
7. Detailed preventive maintenance activities;
8. Troubleshooting, diagnostics, and testing;
9. Equipment assembly and disassembly;
10. Repair and parts replacement;
11. Parts ordering practices and storage;
12. Failure and recovery procedures;
13. Cabling and/or interface connectors;
14. Content and use of operation and maintenance manuals and related reference materials;
15. Procedures for warranty repairs;
16. Lubrication; and
17. Procedures, practices, documentation, and materials required to commence system maintenance.

G. Provide training for the equipment listed in the table below. The table indicates the minimum acceptable training time. Provide additional hours of training if required to meet the training objectives described in this Section.

Specification Section	Equipment/System Description	Min. Hours
40 61 13	Cellular Monitoring System	4
40 67 16	Control Panel	4
44 42 56.04	Submersible Pumps – LS 4, 35	8
44 42 56.09	Centrifugal Self-Priming Pumps –LS 15, LS 17	8

END OF SECTION