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 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 which clarify or modify the Bidding Requirements or the proposed Contract Documents.

2. Agreement - The document executed between Owner and Contractor covering the Work.

3. Alternative Dispute Resolution - The process by which a disputed Claim may be settled as an alternative to litigation, if Owner and Contractor cannot reach an agreement between themselves.

4. Application for Payment - The forms used by Contractor to request payments from Owner and the supporting documentation required by the Contract Documents.

5. Award Date – The date the City Council of the City of Corpus Christi (City) authorizes the City Manager or designee to execute the Contract on behalf of the City.

6. Bid - The documents submitted by a Bidder to establish the proposed Contract Price and Contract Times and provide other information and certifications as required by the Bidding Requirements.

7. Bidding Documents - The Bidding Requirements, the proposed Contract Documents, and Addenda.

8. Bidder - An individual or entity that submits a Bid to Owner.

9. Bidding Requirements - The Invitation for Bids, Instructions to Bidders, Bid Security, Bid Form and attachments, and required certifications.

10. Bid Security - The financial security in the form of a bid bond provided by Bidder at the time the Bid 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. A cashier’s check, certified check, money order or bank draft from any State or National Bank will also be acceptable.


12. 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.
13. 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 a Modification with respect to the terms of the Contract.

14. City Engineer - The Corpus Christi City Engineer and/or his designated representative as identified at the preconstruction conference or in the Notice to Proceed.

15. 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 the Owner or Contractor is not a Claim.

16. Constituent of Concern - Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous wastes, and substances, products, wastes, or other materials that are or become listed, regulated, or addressed pursuant to:
   e. The Clean Water Act, 33 U.S.C. §§1251 et seq.;
   f. The Clean Air Act, 42 U.S.C. §§7401 et seq.; or
   g. Any other Laws or Regulations regulating, relating to, or imposing liability or standards of conduct concerning hazardous, toxic, or dangerous waste, substance, or material.

17. Contract - The entire integrated set of documents concerning the Work and describing the relationship between the Owner and Contractor.

18. 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.


20. 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.
21. **Contract Times** - The number of days or the dates by which Contractor must:
   a. Achieve specified Milestones;
   b. Achieve Substantial Completion; and
   c. Complete the Work.

22. **Contractor** - The individual or entity with which Owner has contracted for performance of the Work.

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

24. **Cost of the Work** - The sum of costs incurred for the proper performance of the Work as allowed by Article 13.

25. **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 or stolen prior to OAR’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.

26. **Designer** - The individuals or entity named as Designer in the Agreement and the subconsultants, individuals, or entities directly or indirectly employed or retained by Designer to provide design or other technical services to the Owner. Designer has responsibility for engineering or architectural design and technical issues related to the Contract Documents. Designers are Licensed Professional Engineers or Registered Architects qualified to practice their profession in the State of Texas.

27. **Drawings** - The part of the Contract that graphically shows the scope, extent, and character of the Work. Shop Drawings and other Contractor documents are not Drawings.

28. **Effective Date of the Contract** - The date indicated in the Agreement on which the City Manager or designee has signed the Contract.

29. **Field Order** - A document issued by OAR or Designer requiring changes in the Work that do not change the Contract Price or the Contract Times.

30. **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 in 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.
31. Indemnified Costs - All costs, losses, damages, and legal or other dispute resolution costs resulting from claims or demands against Owner’s Indemnitees. These costs include fees for engineers, architects, attorneys, and other professionals.

32. Laws and Regulations; Laws or Regulations - Applicable laws, statutes, rules, regulations, ordinances, codes, and orders of governmental bodies, agencies, authorities, and courts having jurisdiction over the Project.

33. Liens - Charges, security interests, or encumbrances upon Contract related funds, real property, or personal property.

34. 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 period of time.

35. Modification - Change made to the Contract Documents by one of the following methods:
   a. Contract Amendment;
   b. Change Order;
   c. Field Order; or
   d. Work Change Directive.

36. Notice of Award - The notice of Owner’s intent to enter into a contract with the Selected Bidder.

37. Notice to Proceed - A notice to Contractor of the Contract Times and the date Work is to begin.

38. Owner - The City of Corpus Christi (City), a Texas home-rule municipal corporation and political subdivision organized under the laws of the State of Texas, acting by and through its duly authorized City Manager and his designee, the City Engineer (the Director of Engineering Services), and the City’s officers, employees, agents, or representatives, authorized to administer design and construction of the Project.

39. Owner’s Authorized Representative or OAR - The individual or entity named as OAR in the Agreement and the consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide construction management services to the Owner. The OAR may be an employee of the Owner.

40. Owner’s Indemnitees - Each member of the OPT and their officers, directors, members, partners, employees, agents, consultants, and subcontractors.

41. Owner’s Project Team or OPT - The Owner, Owner’s Authorized Representative, Resident Project Representative, Designer, and the consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide services to the Owner.

42. Partial Occupancy or Use - Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
43. 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.

44. Project - The total undertaking to be accomplished for Owner under the Contract Documents.

45. Resident Project Representative or RPR - The authorized representative of OPT assigned to assist OAR at the Site. As used herein, the term Resident Project Representative includes assistants and field staff of the OAR.

46. 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.

47. Schedule of Documents - A schedule of required documents, prepared, and maintained by Contractor.

48. 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.

49. Selected Bidder - The Bidder to which Owner intends to award the Contract.

50. Shop Drawings - All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled 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.

51. 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 furnished by Owner which are designated for use by the Contractor.

52. 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.

53. 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.

54. 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.

55. Supplementary Conditions - The part of the Contract that amends or supplements the General Conditions.

56. Supplier - A manufacturer, fabricator, supplier, distributor, materialman, 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.

57. Technical Data - Those items expressly identified as Technical Data in the Supplementary Conditions with respect to either:
   a. Subsurface conditions at the Site;
b. Physical conditions relating to existing surface or subsurface structures at the Site, except Underground Facilities; or  
c. Hazardous Environmental Conditions at the Site.  

58. Underground Facilities - All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, other similar facilities or appurtenances, and encasements containing these facilities which are used to convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.  

59. Unit Price Work - Work to be paid for on the basis of unit prices.  

60. Work - The construction of the Project or its component parts as required by the Contract Documents.  

61. 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, but when used in the Bidding Requirements or Contract Documents, have the indicated meaning.  

B. It is understood that the cost for performing 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 including or similar to “at no additional cost to Owner,” “at Contractor’s expense,” or similar words mean that the Contractor is to perform or provide specified operation of Work without an increase in the Contract Price.  

C. The terms “day” or “calendar day” mean a calendar day of 24 hours measured from midnight to the next midnight.  

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 the OPT.  

2. Adjectives including or similar to “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 the 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 the OPT to undertake responsibilities contrary to the provisions of Articles 9 or 10 or other provisions of the Contract Documents.
E. The use of the words “furnish,” “install,” “perform,” and “provide” have the following meanings when used in connection with 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.”

F. Contract Documents are written in modified brief style:

1. Requirements apply to all Work of the same kind, class, and type even though the word “all” is not stated.
2. 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 “The Contractor shall...” before these words.
3. Unless specifically stated that action is to be taken by the OPT or others, it is understood that the action described is a requirement of the Contractor.

G. 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.

H. Written documents are required where reference is made to notices, reports, approvals, consents, documents, statements, instructions, opinions or other types of 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 the OPT’s project management information system or other electronic media as required by the Contract Documents or approved by the OAR.

I. 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 with the executed Agreement.

B. Provide evidence of insurance required by the Contract Documents with the executed Agreement.
2.02 Copies of Documents

A. OPT is to furnish one fully executed Agreement and 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 Documents; and
3. Schedule of Values and projected cash flow information.

2.04 Preconstruction Conference; Designation of Authorized Representatives

A. Attend the preconstruction conference as required by the Contract Documents.

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

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

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

A. Requirements of components 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 of the 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 OPT.

1. 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.

2. In offering a Bid for this Project and in entering into this Contract, Contractor represents:

   a. Contractor has studied the Contract Documents, the Work, the Site, local conditions, Laws and Regulations, and other conditions that may affect the Work;
   b. Contractor has studied the Technical Data and other information referred to in the Contract Documents and has or will make additional surveys and investigations as deemed necessary for the performance of the Work;
   c. Contractor has correlated these studies and observations with the requirements of the Contract Documents; and
d. Contractor has taken all of this information into consideration in developing the Contract Price offered and that the Contract Price offered provides full compensation for providing the Work in accordance with the Contract Documents.

3. Organization of the Contract Documents is not intended to control or lessen the responsibility of the Contractor when dividing Work among Subcontractors or Suppliers, or to establish the extent of Work to be performed by trades, Subcontractors, or Suppliers. 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.

4. 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.

5. 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.

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

C. 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.

D. 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.

E. 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.

F. 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.

G. Request clarification from OAR for a decision before proceeding if Contractor is not clear on the meaning of the Contract Documents. OAR is to issue clarifications and interpretations of the Contract Documents in accordance with the Contract Documents.
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 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 the 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. Designer determines whether a code or standard is applicable, which of several are applicable, or if the Contract Documents produce a higher quality of Work.

C. Make copies of reference standards available if requested by OAR.

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 the OAR. Do not proceed with affected Work until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation from the OAR or by a Modification to the Contract Documents issued pursuant to Paragraph 11.01.
   2. Immediately notify the OAR 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 the OAR 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 the 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 components of the Contract Documents was known, but not reported prior to submitting the Bid 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 the OAR immediately after those questions arise. OAR is to provide an interpretation of the Contract Documents regarding these questions and will coordinate the response of the OPT to Contractor.

B. Submit questions regarding the design of the Project described in the Contract Documents to the OAR immediately after those questions arise. OAR is to request an interpretation of the Contract Documents from the Designer. Designer is to respond to these questions by providing an interpretation of the Contract Documents. OAR will coordinate the response of the OPT to Contractor.

C. OPT may initiate a Modification to the Contract Documents through the OAR if a response to the question indicates that a change in the Contract Documents is required. Contractor may appeal Designer’s or OAR’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 is allowed to retain a copy of the Contract Documents for record purposes, unless specifically prohibited by the 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 the 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.

4.02 Starting the Work

A. Begin performing the Work on the date indicated in the Notice to Proceed. Do not begin Work prior to having the insurance required in Article 6 in force or before the date indicated in the Notice to Proceed.
4.03 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.

4.04 Delays in Contractor’s Progress

A. Contractor is entitled to an equitable adjustment in the Contract Times if OPT directly delays, disrupts, or interferes with the performance or progress of the Work. The Contractor agrees to make no Claim for damages for delay in the performance of the Contract occasioned by an act or omission to act of the OPT and agrees that the extension of time provides an equitable adjustment.

B. 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.

C. No time extensions are allowed for weather conditions, other than those listed in Paragraph 4.04.D.1, for Projects using calendar days or a fixed date to establish the Contract Time. Contractor is to include the cost associated with weather related delays in the Contract Price and assumes the risks associated with delays related to weather conditions.

D. Contractor is entitled to an equitable adjustment in the Contract Times 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 unanticipated causes may include:
   1. Severe and unavoidable natural catastrophes e.g. fires, floods, hurricanes, epidemics, and earthquakes;
   2. Acts or failures to act of utility owners other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8; and
   3. Acts of war or terrorism.
   4. Rain days in excess of the number of days allocated for rain as described in the Supplementary Conditions.

E. Delays, disruption, and interference to the performance or progress of the Work resulting from the following are governed by Article 5:
   1. The existence of a differing subsurface or physical condition;
   2. An Underground Facility not shown or not indicated with reasonable accuracy by the Contract Documents; and
3. Hazardous Environmental Conditions.

These adjustments in Contract Times are the Contractor’s sole and exclusive remedy for the delays, disruption, and interference described in this paragraph.

F. Article 8 governs 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.

G. Notify the OAR 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.

H. 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 the 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.

I. 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 the Owner if this delay is concurrent with a delay, disruption, or interference attributable to or within the control of the Contractor’s Team.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

A. Owner is to furnish the Site and inform the 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 OAR before using them.

5.02 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. 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 the Contractor’s Team, including:

   a. Damage to the Site;
   
   b. Damage to adjacent areas used for Contractor’s Team’s operations;
   
   c. Damage to other adjacent land or areas; and
d. Injuries and losses sustained by the owners or occupants of these lands or areas.

2. 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 the Contractor’s Team:
   a. Take immediate corrective or remedial action as required by Paragraph 7.09; and
   b. 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.

5.03 Subsurface and Physical Conditions

A. The Supplementary Conditions identify:
   1. Those reports known to OPT of explorations and tests of subsurface conditions at or adjacent to the Site;
   2. Those drawings known to OPT of physical conditions related to existing surface or subsurface structures at the Site, except Underground Facilities; and
   3. Technical Data contained in these reports and drawings.

B. Data contained in boring logs, recorded measurements of subsurface water levels, and the results of tests performed on materials described in geotechnical data 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.

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

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 to do so is issued by OAR.

B. OAR is to notify the OPT after receiving notice of a differing subsurface or physical condition from the Contractor. Designer is to:

1. Promptly review the subsurface or physical condition;
2. Determine the necessity of OPT’s obtaining additional exploration or tests with respect to 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 to OPT regarding the Contractor’s resumption of Work in connection with the subsurface or physical condition in question;
5. Determine the need for changes in the Drawings or Specifications; and
6. Advise OPT of Designer’s findings, conclusions, and recommendations.

C. OAR is to issue a statement to Contractor regarding the subsurface or physical condition in question and recommend action as appropriate after review of Designer’s findings, conclusions, and recommendations.

D. Possible Contract Price and Contract Times Adjustments:

1. 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.

2. Contractor is not entitled to an adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
   a. 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;
   b. The existence of the subsurface or physical condition could have been discovered or revealed as a result of examinations, investigations, explorations, tests, or studies of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents prior to when Contractor’s Bid is submitted or when Contractor negotiates the Contract Price; or
   c. Contractor failed to give notice as required by Paragraph 5.04.A.

3. Contractor may submit a Change Proposal no later than 30 days after OAR’s issuance of the OPT’s statement to Contractor regarding the subsurface or physical condition in question.
4. A Change Order is to be issued by the OAR if Owner and Contractor agree that Contractor is entitled to an adjustment in the Contract Price or Contract Times and agree to the amount or extent of adjustments in the Contract Price or Contract Times.

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. The 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 the OAR 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. The Designer is to take the following action after receiving notice from the OAR:

1. Promptly review the Underground Facility and conclude whether the Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy;
2. Prepare recommendations to OPT regarding the Contractor’s resumption of Work in connection with this Underground Facility;
3. 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
4. Advise OAR of Designer’s findings, conclusions, and recommendations and provide revised Drawings and Specifications if required.

D. OAR is to issue a statement to Contractor regarding the Underground Facility in question and recommend action as appropriate after review of Designer’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 as a result of examinations, investigations, explorations, tests, or studies of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents prior to when Contractor’s Bid 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 OAR’s issuance of OPT’s statement to Contractor regarding the Underground Facility.

5.06 Hazardous Environmental Conditions at Site

A. The Supplementary Conditions identify:

1. Those reports and drawings known to OPT relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and

2. 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. Contractor’s obligation to indemnify Owner’s Indemnitees for claims arising out of or related to Hazardous Environmental Conditions are as set forth in Paragraph 7.14.

F. Immediately notify the OAR and take the following action if Contractor uncovers or reveals a Hazardous Environmental Condition at the Site or adjacent areas used by the Contractor’s Team that was not created by the 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 in connection with the Hazardous Environmental Condition or in affected areas until after OPT has obtained required permits and OAR sends notice to the 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 the OAR.

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 OAR’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 Performance and Payment Bonds, each in an amount equal to the Contract Price, as security for the faithful performance and payment of Contractor’s obligations under the Contract Documents. These Bonds are to remain in effect until 1 year after the date of final payment. Furnish other Bonds as required by the Contract Documents.

B. Bonds furnished by the Contractor must meet the requirements of Texas Insurance Code Chapter 3503, Texas Government Code Chapter 2253, and all other applicable Laws and Regulations.

C. Notify OAR immediately if the surety on Bonds furnished by Contractor:
   1. Is declared bankrupt, or becomes insolvent;
   2. Has its right to do business in Texas 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. Contractor is to use amounts paid by Owner to Contractor under the Contract for the performance of the Contract and to satisfy claims against the Payment Bond.

E. Notify the OAR of claims filed against the Payment Bond. Notify the claimant and OAR of undisputed amounts and the basis for challenging disputed amounts when a claimant has satisfied the conditions prescribed by Texas Government Code Chapter 2253. Promptly pay undisputed amount.

F. 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.

G. Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16 if Contractor fails to obtain or maintain required Bonds.

H. OPT will provide a copy of the Payment Bond 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 Texas Government Code Chapter 2253.

6.02 Licensed Sureties

A. Provide Bonds in the form prescribed by the Contract Documents from sureties named in the list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury.

B. Provide Bonds required by the Contract Documents from surety companies that are duly licensed or authorized to provide bonds in the State of Texas.
6.03 Insurance

A. Obtain and maintain insurance as required in this Article and in SECTION 00 72 01 INSURANCE REQUIREMENTS.

B. Deliver evidence of insurance in accordance with SECTION 00 72 01 INSURANCE REQUIREMENTS to the 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 each named insured and additional insured as identified in the Supplementary Conditions or otherwise.

ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

7.01 Supervision and Superintendence

A. Supervise, inspect, and direct the performance of the Work in accordance with the Contract Documents. Contractor is solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. Provide a competent resident superintendent acceptable to the OPT. The resident superintendent or acceptable qualified assistant is to be present at all times 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 the Owner prior to replacing the resident superintendent and obtain Owner’s consent to the change in superintendent.

7.02 Labor; Working Hours

A. Provide competent, suitably qualified personnel to survey and lay out the Work and perform Work to complete the Project. Maintain good discipline and order at the Site.

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 legal holiday without OAR’s consent. The following legal holidays are observed by the Owner:

<table>
<thead>
<tr>
<th>Holiday</th>
<th>Date Observed</th>
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<tbody>
<tr>
<td>New Year’s Day</td>
<td>January 1</td>
</tr>
<tr>
<td>Memorial Day</td>
<td>Last Monday in May</td>
</tr>
<tr>
<td>Independence Day</td>
<td>July 4</td>
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<tr>
<td>Labor Day</td>
<td>First Monday in September</td>
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<tr>
<td>Thanksgiving Day</td>
<td>Fourth Thursday in November</td>
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<tr>
<td>Friday after Thanksgiving</td>
<td>Friday after Thanksgiving</td>
</tr>
<tr>
<td>Christmas Day</td>
<td>December 25</td>
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</table>
D. 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.

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

7.03 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, start-up, 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 the OAR.

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.

7.04 Concerning Subcontractors, Suppliers, and Others

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. All Subcontractors and Suppliers must be acceptable to Owner.

B. Contractor must retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required to do so by the Contract Documents.

C. Submit a list of proposed Subcontractors and Suppliers to OAR 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 30 days after receiving this list.

D. Contractor is not required to retain Subcontractors, Suppliers, or other individuals or entities to furnish or perform part of the Work after the Effective Date of the Contract if Contractor has reasonable objection.

E. Owner may require the replacement of Subcontractors, Suppliers, or other individuals or entities retained by the Contractor. Provide an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity. Owner also may require Contractor to retain specific replacements, subject to Contractor’s reasonable objections.

F. Contractor may be entitled to an adjustment in Contract Price or Contract Times with respect to a replacement of Subcontractors, Suppliers, or other entities required by Owner. The Contractor is not entitled to an adjustment in Contract Price or Contract Time with respect to replacement of any individual deemed unsuitable by the OPT. Notify OAR immediately if a replacement of Subcontractors, Suppliers, or other entity 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, Supplier, or other entity retained by Contractor to perform part of the Work. Do not make the replacement until the change in Contract Price or Contract Times has been accepted by the Owner if Change Proposal is to be submitted.

G. Owner’s initial acceptance of Subcontractors, Suppliers, or other individuals or entities, or their replacements, does not constitute a waiver of the obligation of the Contractor to complete the Work in accordance with the Contract Documents.

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

I. Contractor is fully responsible for the acts and omissions of Subcontractors, Suppliers, and other individuals or entities performing or furnishing Work.

J. Contractor is solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing Work.

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

L. Contracts between the 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.

1. All Subcontractors employed on this Project must be required to obtain Workers’ Compensation Insurance.

2. Proof of this insurance will be required prior to the start of any Work.

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

N. Nothing in the Contract Documents:

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

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

7.05 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 the Contractor, in the Contract Price.
B. Contractor’s obligation to indemnify Owner’s Indemnitees for claims arising out of or related to infringement of patent rights and copyrights are as set forth in Paragraph 7.14.

7.06 Permits

A. Obtain and pay for construction permits and licenses. 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 is submitted or when Contractor negotiates the Contract Price.

7.07 Taxes

A. Contractor is responsible for all taxes and duties arising out of the Work. 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 city or state sales or use taxes, however certain items such as rented equipment may be taxable even though Owner is a tax-exempt agency. Contractor is responsible for including in the Contract Price any applicable sales and use taxes and is responsible for complying with all applicable statutes and rulings of the State Comptroller. Pay sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations.

B. The Owner is exempt from the Federal Transportation and Excise Tax. Contractor must comply with all federal regulations governing the exemptions.

C. Products incorporated into the Work are exempt from state sales tax according to the provisions of Subchapter H, Chapter 151, of the Texas Tax Code.

D. Contractor may not include any amounts for sales, use, or similar taxes for which the Owner is exempt in the Contract Price or any proposed Change Order or Application for Payment.

E. Obtain tax exemption certificates or other documentation necessary to establish Owner’s exemption from such taxes.

7.08 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. 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 is submitted or when Contractor negotiates the Contract Price.
D. 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.

7.09 Safety and Protection

A. Contractor is solely responsible for initiating, maintaining, and supervising safety precautions and programs in connection with 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 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 in the course of 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 the 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.
7.10 Safety Representative

A. 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 material 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 OAR immediately if Contractor believes that significant changes in the Work or variations from the Contract Documents have been caused or are required as a result of this need to act. A Modification is to be issued by OAR if OPT determines that the incident giving rise to the emergency action was not the responsibility of the 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. 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 improper maintenance or operation, abuse, 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 or a release of Contractor’s obligation to perform Work in accordance with the Contract Documents:
   1. Observations by OPT;
   2. Recommendation by OAR or payment by Owner of progress or final payments;
   3. The issuance of a Certificate of Substantial Completion;
   4. Use or occupancy of part of the Work by Owner;
   5. Review and approval of a Shop Drawing or Sample;
   6. Inspections, tests, or approvals by others; or
   7. Correction of Defective Work by Owner.

D. The Contract Documents may require the 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 Indemnification

A. **TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OWNER’S INDEMNITEES FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY’S FEES OR DISPUTE RESOLUTION COSTS, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, VIOLATIONS OF LAWS OR REGULATIONS, OR BODILY INJURY, DEATH, OR DESTRUCTION OF TANGIBLE PROPERTY CAUSED BY THE ACTS OR OMISSIONS OF THE CONTRACTOR’S TEAM, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ALLEGED TO BE CAUSED IN PART BY AN OWNER’S INDEMNITEE HEREUNDER, SUBJECT TO THE OWNER’S DEFENSES AND LIABILITY LIMITS UNDER THE TEXAS TORT CLAIMS ACT. HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY AN OWNER’S INDEMNITEE AGAINST A CLAIM, LOSS, DAMAGE OR EXPENSE CAUSED BY THE (I) NEGLIGENCE OR FAULT, (II) BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE, OR (III) THE BREACH OF CONTRACT BY AN OWNER’S INDEMNITEE. PROVIDED FURTHER HOWEVER, AND IN ADDITION TO THE ABOVE, CONTRACTOR INDEMNIFIES EACH OF OWNER’S INDEMNITEES AGAINST CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE CONTRACTOR’S TEAM OF ANY TIER EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF AN OWNER’S INDEMNITEE.**

B. **TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OWNER’S INDEMNITEES FROM AND AGAINST INDEMNIFIED COSTS, ARISING OUT OF OR RELATING TO: (I) THE FAILURE TO CONTROL, CONTAIN, OR REMOVE A CONSTITUENT OF CONCERN BROUGHT TO THE SITE BY CONTRACTOR’S TEAM OR A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR’S TEAM, (II) 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, OR (III) THE CORRECTION OF DEFECTIVE WORK. NOTHING IN THIS PARAGRAPH OBLIGATES THE CONTRACTOR TO INDEMNIFY THE OWNER’S INDEMNITEES FROM THE CONSEQUENCES OF THE OWNER’S AND OWNER’S INDEMNITEES OWN NEGLIGENCE. PROVIDED FURTHER HOWEVER, AND IN ADDITION TO THE ABOVE, CONTRACTOR INDEMNIFIES THE OWNER’S INDEMNITEES AGAINST CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE CONTRACTOR’S TEAM OF ANY TIER EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF AN OWNER’S INDEMNITEE.**

C. **TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OWNER’S INDEMNITEES FROM AND AGAINST INDEMNIFIED COSTS RESULTING FROM INFRINGEMENT ON PATENT RIGHTS OR COPYRIGHTS BY CONTRACTOR’S TEAM TO THE FULLEST EXTENT PERMITTED BY LAW.**

D. The indemnification obligations under this paragraph are not limited by the amount or type of damages, compensation, or benefits payable by or for members of the 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.
E. The indemnification obligations of this Paragraph 7.14 do not extend to the liability of Designer 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.

F. Notify the other party within 10 days if Owner or Contractor receives notice of any claim or circumstances that could give rise to an indemnified loss. The notice must include the following:
   1. A description of the indemnification event in reasonable detail;
   2. The basis on which indemnification may be due; and
   3. The anticipated amount of the indemnified loss.

This notice does not stop or prevent Owner’s Indemnitees from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. Owner’s Indemnitees do not waive any rights to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay if Owner does not provide this notice within the 10-day period.

G. Defense of Indemnification Claims:
   1. Assume the defense of the claim with counsel chosen by the Contractor and pay related costs, unless Owner decides otherwise. Contractor’s counsel must be acceptable to Owner. Control the defense and any negotiations to settle the claim. Advise Owner’s Indemnitees as to its defense of the claim within 10 days after being notified of the indemnification request. Owner’s Indemnitees may assume and control the defense if Contractor does not assume the defense. Pay all defense expenses of the Owner’s Indemnitees as an indemnified loss.
   2. Owner’s Indemnitees may retain separate counsel to participate in, but not control, the defense and any settlement negotiations if Contractor defends the claim. Contractor may not settle the claim without the consent or agreement of Owner. Contractor may settle the claim with Owner’s consent and agreement unless it:
      a. Would result in injunctive relief or other equitable remedies or otherwise require Owner’s Indemnitees to comply with restrictions or limitations that adversely affect Owner’s Indemnitees;
      b. Would require Owner’s Indemnitees to pay amounts that Contractor does not fund in full; or
      c. Would not result in Owner and Owner’s Indemnitees’ full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

7.15 Delegation of Professional Design Services

A. Contractor is not required to provide professional design services unless these services are specifically required by the Contract Documents for a portion of the Work or unless these services are required to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.
B. The Contract Documents specify performance and design criteria related to systems, materials, or equipment if professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor. These services or certifications must be provided by the licensed Texas Professional Engineer or Registered Architect who prepares, signs, and seals drawings, calculations, specifications, certifications, Shop Drawings, and other documents.

C. 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.

D. Pursuant to this Paragraph 7.15, Designer’s review and approval of design calculations and design drawings is only for the limited purpose of checking for conformance with the performance and design criteria given and the design concepts expressed in the Contract Documents. Designer’s review and approval of Shop Drawings and other documents is only for the purpose stated in the Contract Documents.

E. 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 OAR and the others whose work will be affected.

E. Inspect the work of others and immediately notify OAR 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 the OAR 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.

8.02 Coordination

A. Owner has sole authority and responsibility for coordination of this other work unless otherwise provided in the Contract Documents. The 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 the OAR immediately of the event leading to a potential Change Proposal so corrective 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 the 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. Contractor’s obligation to indemnify Owner’s Indemnitees for claims arising out of or related damages, delays, disruptions, and interference with other work at the Site are as set forth in Paragraph 7.14.

ARTICLE 9 – OWNER’S AND OPT’S RESPONSIBILITIES

9.01 Communications to Contractor
   A. OPT issues communications to Contractor through OAR except as otherwise provided in the Contract Documents.

9.02 Replacement of Owner’s Project Team Members
   A. Owner may replace members of the 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. The 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.
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 the OPT of its safety programs and OPT is to comply with the specific applicable requirements of this program.

ARTICLE 10 – OAR’S AND DESIGNER’S STATUS DURING CONSTRUCTION

10.01 Owner’s Representative
   A. OAR is Owner’s representative. The duties and responsibilities and the limitations of authority of OAR as Owner’s representative are described in the Contract Documents.

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

10.03 Resident Project Representatives
   A. Resident Project Representatives assist OAR in observing the progress and quality of the Work at the Site. The limitations on Resident Project Representatives’ authority and responsibility are described in Paragraphs 9.09 and 10.07.

10.04 Rejecting Defective Work
   A. OPT has the authority to reject Work in accordance with Article 14. OAR is to issue a Defective Work Notice to Contractor and document when Defective Work has been corrected or accepted in accordance with Article 14.

10.05 Shop Drawings, Modifications and Payments
   A. Designer’s authority related to Shop Drawings and Samples are described in the Contract Documents.
   B. Designer’s authority related to design calculations and design drawings submitted in response to a delegation of professional design services are described in Paragraph 7.15.
C. OAR and Designer’s authority related to Modifications is described in Articles 11.
D. OAR’s authority related to Applications for Payment is described in Articles 13 and 15.

10.06 Decisions on Requirements of Contract Documents and Acceptability of Work

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

B. Designer is to render decisions regarding the conformance of the Work to the requirements of the Contract Documents. Designer 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. OAR will coordinate the response of the OPT to Contractor.

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

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

10.07 Limitations on OAR’s and Designer’s Authority and Responsibilities

A. 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 the OPT to the Contractor or members of the Contractor’s Team.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 Amending and Supplementing the Contract Documents

A. The Contract Documents may be modified by a Contract Amendment, Change Order, Work Change Directive, or Field Order.

1. Contract Amendment: Owner and Contractor may modify the terms and conditions of the Contract Documents without the recommendation of the Designer using a Contract Amendment. A Contract Amendment may be used for:

a. Changes that do not involve:
   1) The performance or acceptability of the Work;
   2) The design as described in the Drawings, Specifications, or otherwise; or
   3) Other engineering, architectural or technical matters.

b. Authorizing new phases of the Work and establishing the Contract Price, Contract Times, or terms and conditions of the Contract for the new phase of Work when using phased construction or purchasing Goods and Special Services to be incorporated into the Project.
2. **Change Order:** All changes to the Contract Documents that include a change in the Contract Price or the Contract Times for previously authorized Work, or changes to the Work requiring Designer’s approval must be made by a Change Order. A Change Order may also be used to establish modifications of the Contract Documents that do not affect the Contract Price or Contract Times.

3. **Work Change Directive:** 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 are to be incorporated in a subsequently issued Change Order following negotiations on the Contract Price and Contract Times. 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.

4. **Field Order:** Designer may require minor changes in the Work that do not change the Contract Price or Contract Times using a Field Order. OAR 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.

B. 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.

11.02 **Owner-Authorized Changes in the Work**

A. **Owner may order** additions, deletions, or revisions in the Work at any time as recommended by the Designer to the extent the change:

1. Involves the design as described in the Contract Documents;
2. Involves acceptance of the Work; or
3. Involves other engineering, architectural or technical matters.

B. These changes may be authorized by a Modification. Proceed with the Work involved or, in the case of a deletion in the Work, immediately cease construction activities with respect to the deleted Work upon receipt of the Modification. Nothing in this paragraph obligates the 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.

11.03 **Unauthorized Changes in the Work**

A. 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.
B. 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.

11.04 Change of Contract Price

A. The Contract Price can only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

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 on the basis of the Cost of the Work determined as provided in Paragraph 13.01 plus a Contractor’s fee for overhead and profit determined as provided in Paragraph 11.04.D 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 or the limit set out in Texas Local Government Code 252.048 or its successor statute. Owner may decrease the Work by up to 25 percent of the Contract Price without adjusting Contractor’s fee.

D. Contractor’s Fee: Determine the Contractor’s fee for overhead and profit as follows:
   1. A mutually acceptable fixed fee; or
   2. A fee based on the following percentages of the various portions of the Cost of the Work:
      a. The Contractor’s fee is 15 percent for costs incurred under Paragraphs 13.01.C.1 and 13.01.C.2;
      b. The Contractor’s fee is 5 percent for costs incurred under Paragraph 13.01.C.3;
      c. Fees are to be determined as follows where one or more tiers of subcontracts are used:
         1) The Subcontractor’s fee is 15 percent for costs incurred under Paragraphs 13.01.C.1 and 13.01.C.2 for the Subcontractor that actually performs the Work at whatever tier; and
         2) The Contractor and Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work are to be allowed a fee of 5 percent of the fee plus underlying costs incurred by the next lower tier Subcontractor;
      d. No fee is payable on the basis of costs itemized under Paragraphs 13.01.C.4, and 13.01.D;
      e. Five percent of the net decrease in the cost is to be deducted for changes which result in a net decrease in Contract Price; and
3. The adjustment in Contractor’s fee is based on the net change in accordance with Paragraphs 11.04.D.2.a through 11.04.D.2.e, inclusive when both additions and credits are involved in any one change.

11.05 Change of Contract Times

A. The Contract Times can only be changed by Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.

B. An adjustment of the Contract Times is subject to the limitations described in Paragraph 4.04.

11.06 Change Proposals

A. Submit a Change Proposal to the OAR to:
   1. Request an adjustment in the Contract Price or Contract Times;
   2. Appeal 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 the OAR immediately if a Change Proposal is to be submitted. Submit each Change Proposal to OAR 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. OAR 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 the OAR to either approve or deny the Change Proposal in whole or in part. OAR is to issue a Change Order for an approved Change Proposal. The Contractor may deem the Change Proposal to be denied if OAR does not take action on the Change Proposal within 30 days and start the time for appeal of the denial under Article 12.

11.07 Execution of Change Orders

A. Owner and Contractor are to execute Change Orders covering:
   1. Changes in the Contract Price or Contract Times which are agreed to by Owner and Contractor, including undisputed sums or amount of time for Work actually performed in accordance with a Work Change Directive;
2. Changes in Contract Price resulting from Owner set-offs unless the set-off has been successfully challenged by Contractor;

3. Changes in the Work which are:
   a. Ordered by Owner pursuant to Paragraph 11.02.A,
   b. Required because Defective Work was accepted under Paragraph 14.04 or Owner’s correction of Defective Work under Paragraph 14.07, or
   c. Agreed to by the Owner and Contractor; and

4. Changes in the Contract Price or Contract Times, or other changes under Paragraph 11.06 or Article 12.

B. Acceptance of a Change Order by Contractor constitutes a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including but not limited to impact, delay, or acceleration damages arising from the subject matter of the Change Order. Each Change Order must be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order. The execution of a Change Order by Contractor constitutes conclusive evidence of Contractor’s agreement to the ordered changes in the Work. 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. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on unchanged Work.

C. All Change Orders require approval by either the City Council or Owner by administrative action. The approval process requires a minimum of 45 days after submission in final form with all supporting data. Receipt of Contractor’s submission by Owner constitutes neither acceptance nor approval of a Bid, nor a warranty that the Bid will be authorized by City Council or administrative action. The time required for the approval process may not be considered a delay and no extensions to the Contract Times or increase in the Contract Price will be considered or granted as a result of the process. Contractor may proceed with Work if a Work Change Directive is issued.

D. A Change Order is deemed to be in full force as if executed by Contractor if the Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07.

11.08 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 the following disputes between Owner and Contractor:

1. A demand or assertion by Owner to Contractor, submitted in accordance with the requirements of the Contract Documents:
   a. Seeking an adjustment of Contract Price or Contract Times;
   b. Contesting an initial decision by Designer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents;
   c. Contesting Designer’s decision regarding a Change Proposal;
   d. Seeking resolution of a contractual issue that OAR has declined to address; or
   e. Seeking other relief with respect to the terms of the Contract.

2. A demand or assertion by Contractor to Owner, submitted in accordance with the requirements of the Contract Documents:
   a. Contesting OPT’s decision regarding a Change Proposal; or
   b. Seeking resolution of a contractual issue that OPT has declined to address.

12.02 Claims Process

A. Claims must be initiated by written notice.

B. Claims by Contractor must be in writing and delivered to the Owner, Designer, and the OAR within 7 days:
   1. After the start of the event giving rise to the Claim; or
   2. After a final decision on a Change Proposal has been made.

C. Claims by Owner must be submitted by written notice to Contractor.

D. The responsibility to substantiate a Claim rests with the entity making the Claim.

E. 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.

F. The entity receiving a Claim is to review the Claim giving full consideration to 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 OAR of actions taken on a Claim.

G. 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 Claim submittal and response process.
2. Owner or Contractor may unilaterally terminate the mediation process after 60 days from the agreement to mediate and resume the Claim submittal and decision 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.

H. 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.

I. Notify the OAR 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.

J. The results of the agreement or action on the Claim is to be incorporated in a Change Order by the OAR to the extent they affect the Contract Documents, the Contract Price, or the Contract Times if the Owner and Contractor reach a mutual 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 event 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 prevailing costs in the proximate area of the Site for similar work unless agreed to by the 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. Where the Cost of the Work is being used under provisions of Paragraph 13.01.A.2, 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 may include:

      1) Social security contributions,
2) Unemployment,
3) Excise and payroll taxes,
4) Workers’ compensation,
5) Health and retirement benefits,
6) Bonuses, and
7) 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 the Contractor for early payment of these materials and equipment. Cash discounts are to be credited to Owner if the 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 unless Owner agrees to use Subcontractors proposed by the Contractor. Bids are to be opened in the presence of the OAR and other designated members for the OPT. Provide copies of bids to the OAR to use in determining, with the 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 including the following:
   a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor’s employees incurred in discharge of duties connected with the Work;
   b. Costs of materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site including transportation and maintenance costs;
   c. Costs of hand tools not owned by the workers consumed in the performance of the Work. Costs of hand tools not owned by the workers which are used but not consumed in the performance of the Work and which remain the property of Contractor, less their market value when Work is completed;
   d. Rental of construction equipment, including the costs of transporting, loading, unloading, assembling, dismantling, and removing construction equipment, whether rented from Contractor or others, in accordance with rental agreements approved by Owner. Costs for rental of equipment will not be paid when the equipment is no longer necessary for the Work. Justify idle time for equipment by demonstrating that it was necessary to keep equipment on Site for related future Work;
e. Applicable sales, consumer, use, and other similar taxes related to the Work for which the 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 items:

1. Payroll costs and other compensation of Contractor’s officers, executives, principals of partnerships and sole proprietorships, 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 or specifically covered by Paragraph 13.01.C.4. These administrative costs are covered by the Contractor’s fee.

2. Office expenses other than Contractor’s office at the Site.

3. Any part of Contractor’s capital expenses, including interest on Contractor’s capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the 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.

5. 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 insurance provided in accordance with Article 6. 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.

6. Any Indemnified Cost paid with regard to Contractor’s indemnification of Owner’s Indemnitees.

7. Other overhead or general expense costs and the costs of items not described in Paragraphs 13.01.C.

E. The Contractor’s fee is determined as follows:

1. In accordance with the Agreement when the Work is performed on a cost-plus basis.


F. 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 OAR 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 the Owner through the OAR.

B. Contractor agrees that:

1. The cash allowance is used to compensate the 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. OAR 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 Bids 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. OAR is to determine the actual quantities and classifications of Unit Price Work performed
by Contractor to be incorporated into each Application for Payment. OAR’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 OAR’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 the 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.

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 the Contractor provided these costs are approved by the 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 the 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. OAR 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 the 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. Notify OAR when the Work is ready for required inspections and tests. Provide adequate notice to allow for coordination.
with entities providing inspection or testing as determined by the OAR. 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 OAR 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 assure that the Work is not Defective.

B. OPT has the authority to determine whether Work is Defective and to reject Defective Work.

C. OAR 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. Fines levied against Owner by governmental authorities because of Defective Work; and
   4. 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. Designer confirms that the Defective Work is in general accordance with the design intent and applicable engineering or architectural principles; and
   3. Designer 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. OAR is to issue a Modification 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 the OAR must be uncovered for OPT’s observation if requested by OAR. Pay for uncovering Work and its subsequent restoration unless Contractor has given OAR timely notice of Contractor’s intention to cover the Work and OAR 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 Designer or inspected or tested by others as directed by the OAR.
   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 be not 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.

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 the following deficiencies after 7 days’ notice to Contractor if:

1. Contractor fails to correct Defective Work, or to remove and replace rejected Work as required by OPT;
2. Contractor fails to perform the Work in accordance with the Contract Documents; or
3. Contractor fails to comply with other provisions of the Contract Documents.

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 14.07.

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; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

A. Progress payments are to be submitted to the OAR on the Application for Payment form provided by the OAR following procedures in the Contract Documents.

1. Progress payments for lump sum Work are to be paid on the basis of 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 on the basis of 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, but not limited to, 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 but not limited to, 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 damages have accrued as a result of Contractor’s failure to achieve Milestones, Substantial Completion, or completion of the Work;
   h. Liens have been filed in connection with the Work, except where Contractor has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of 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 the OAR;
   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 OAR or RPR, third review of documents, review of substitutions, re-inspection fees, inspections or designs related to correction of Defective Work, or other services identified as requiring payment by the Contractor;
o. Costs for tests performed by the 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. Other items entitling Owner to a set-off against the amount recommended; or

r. Payment would result in an over-payment of the Contract Price.

2. Compensation for services of OPT staff is to be at the rates established by negotiations between OPT and Contractor.

3. OAR is to notify Contractor stating the amount and the reasons for an imposed set-off. The Owner is to pay the 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. Delayed Payments:

1. No money shall be paid by Owner upon any claim, debt, demand, or account whatsoever, to any person, firm, or corporation who is in arrears to Owner for taxes; and Owner shall be entitled to counterclaim and automatically offset against any such debt, claim, demand, or account in the amount of taxes so in arrears and no assignment or transfer of such debt, claim, demand, or account after said taxes are due, shall affect the right of Owner to offset said taxes, and associated penalties and interest if applicable, against the same.

2. No payment will be made for Work authorized by a Work Change Directive until the Work Change Directive is incorporated into a Change Order. Payment can be included in an Application for payment when the Change Order is approved.

D. The Owner is to pay the amount of payment recommended by the OAR within 30 days after receipt of the Application for Payment and accompanying documentation from the OAR.

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 OAR when Contractor considers the entire Work 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. OAR 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 1-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. OAR is to notify Contractor of Work determined to be incomplete or Defective. Immediately take corrective measures to complete the Work and correct Defective Work.

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; and

2. Certification of Payment of Debts and Claims or Certification of Release of Liens or furnish receipts or releases in full from Subcontractors and Suppliers.

B. OAR 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 the Contractor of the 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 OAR’s recommendation of payment of the final Application for Payment to Owner and the issuance of a Certificate of Final Completion.

D. The Owner is to pay the amount of final payment recommended by the OAR within 30 days after receipt of the final Application for Payment and accompanying documentation from the OAR.

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 Contract Documents or the terms of specified special guarantees; or
4. Contractor’s continuing obligations under the Contract Documents.

B. Contractor waives claims and rights against Owner by accepting final payment with the exception of those Claims made in accordance with the provisions of Article 17 and specifically noted in the Certificate of Final Completion.

15.08 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 15.08.A and 15.08.B corrected if Contractor does not comply with the terms of OAR’s instructions, or in an emergency where delay would cause serious risk of loss or damage.

D. Contractor’s obligation to indemnify Owner’s Indemnitees for claims arising out of or related to the correction of Defective Work are as set forth in Paragraph 7.14.

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 the 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 15.08.E. This extended correction period starts to run when Defective Work has been satisfactorily corrected under this Paragraph 15.08.
G. Contractor’s obligations under this Paragraph 15.08 are in addition to other obligations or warranties. The provisions of this Paragraph 15.08 are not a substitute for, or a waiver of, the provisions of applicable statutes of limitation or repose.

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 only if efforts are made to mitigate the cost impacts of the suspension. Meet with the Owner within 10 days of the notice of suspension to discuss specific strategies to reduce or eliminate the cost of delays. 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 the 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 on account of 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 OAR’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 the 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 OAR. 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 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. No payment is payable to Contractor for loss of anticipated overhead, profits or revenue, or other economic loss arising out of or resulting from this termination.
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 of time 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 days involved.

18.02 Owner’s Right to Audit Contractor’s Records

A. By execution of the Contract, Contractor grants Owner the right to audit, examine, inspect and/or copy, at Owner’s election at all reasonable times during the term of this Contract and for a period of four (4) years following the completion or termination of the Work, all of Contractor’s written and electronically stored records and billings relating to the performance of the Work under the Contract Documents. The audit, examination or inspection may be performed by an Owner designee, which may include its internal auditors or an outside representative engaged by Owner. Contractor agrees to retain its records for a minimum of four (4) years following termination of the Contract, unless there is an ongoing dispute under the Contract, then, such retention period must extend until final resolution of the dispute. As used in these General Conditions, "Contractor written and electronically stored records" include any and all information, materials and data of every kind and character generated as a result of the work under this Contract. Example of Contractor written and electronically stores records include, but are not limited to: accounting data and reports, billings, books, general ledgers, cost ledgers, invoices, production sheets, documents, correspondences, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, Subcontractor agreements, Supplier agreements, rental equipment proposals, federal and state tax filings for any issue in question, along with any and all other agreements, sources of information and matters that may, in Owner's sole judgment,
have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

B. Owner agrees to exercise the right to audit, examine or inspect Contractor’s records only during regular business hours. Contractor agrees to allow Owner and/or Owner’s designee access to all of the Contractor’s Records, Contractor’s facilities and current or former employees of Contractor, deemed necessary by Owner or its designee(s), to perform such audit, inspection or examination. Contractor also agrees to provide adequate and appropriate work space necessary for Owner or its designees to conduct such audits, inspections or examinations.

C. Contractor must include this Section in any Subcontractor, supplier or vendor contract.

18.03 Independent Contractor

A. Contractor is to perform its duties under this Contract as an independent contractor. The Contractor’s Team and their personnel are not considered to be employees or agents of the Owner. Nothing in this Contract is to be interpreted as granting Contractor’s Team the right or authority to make commitments for the Owner. This Contract does not constitute or create a joint venture, partnership, or formal business organization of any kind.

18.04 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 18.03 are as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.05 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.

18.06 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.

18.07 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.
18.08 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.

18.09 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.

18.10 Assignment of Contract
   A. This Contract may not be assigned in whole or in part by the Contractor without the consent of the Owner.

18.11 No Waiver of Sovereign Immunity
   A. The 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 governed by the laws of the State of Texas without regard to its conflicts of laws. Venue for legal proceedings lies exclusively in Nueces County, Texas.

18.13 Conditions Precedent to Right to Sue
   A. Notwithstanding anything herein to the contrary, Contractor will have at least 90 days to give notice of a claim for damages as a condition precedent to the right to sue on the Contract, subject to the contractual Claims and Alternative Dispute Resolution processes set forth herein.

18.14 Waiver of Trial by Jury
   A. Owner and Contractor agree that they have knowingly waived and do hereby waive the right to trial by jury and have instead agreed, in the event of any litigation arising out of or connected to this Contract, to proceed with a trial before the court, unless both parties subsequently agree otherwise in writing.

18.15 Attorney Fees
   A. The Parties expressly agree that, in the event of litigation, all parties waive rights to payment of attorneys’ fees that otherwise might be recoverable, pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, the Prompt Payment Act, common law or any other provision for payment of attorney’s fees.

18.16 Compliance with Laws
   A. Comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.
B. Comply with all applicable federal, state, and city laws, rules and regulations.

18.17 Enforcement

A. The City Manager or designee and the City Attorney or designee, are fully authorized and will have the right to enforce all legal rights and obligations under the Contract without further authorization from City Council.

18.18 Subject to Appropriation

A. Funds are appropriated by the Owner on a yearly basis. If for any reason funds are not appropriated in any given year, the Owner may direct immediate suspension or termination of the Contract, with no additional liability to the Owner. If the Contractor is terminated or suspended and the Owner requests remobilization at a later date, the Contractor may request payment for reasonable demobilization/remobilization costs. Such costs shall be addressed through a Change Order to the Contract. Under no circumstances may a provision or obligation under this Contract be interpreted as contrary to this paragraph.

18.19 Contract Sum

A. The Contract Sum is stated in the Contract and, including authorized adjustments, is the total maximum not-to-exceed amount payable by Owner to Contractor for performance of the Work under the Contract Documents. Contractor accepts and agrees that all payments pursuant to this Contract are subject to the availability and appropriation of funds by the Corpus Christi City Council. If funds are not available and/or appropriated, this Contract shall immediately be terminated with no liability to any party to this Contract.

18.20 Contractor’s Guarantee as Additional Remedy

A. The Contractor’s guarantee is a separate and additional remedy available to benefit the Owner. Neither the guarantee nor the expiration of the guarantee period will operate to reduce, release, or relinquish any rights or remedies available to the Owner for any claims or causes of action against the Contractor or any other individual or entity.

END OF SECTION