

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION MANAGER AT RISK CONTRACT WITH SUNDT CONSTRUCTION, INC., FOR CONSTRUCTION PHASE SERVICES FOR THE PECAN CREEK WATER RECLAMATION PLANT EXPANSION PROJECT FOR THE WATER UTILITIES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8289 – AWARDED TO SUNDT CONSTRUCTION, INC., INCLUDING THE FIRST GUARANTEED MAXIMUM PRICE IN THE PARTIAL NOT-TO-EXCEED AMOUNT OF \$92,321,565.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for construction phase services for the Pecan Creek Water Reclamation Plant Expansion Project for the Water Utilities Department; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered request for proposal for materials, equipment, supplies, or services shown in the “Request Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals.

<u>RFP</u> <u>NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8289	Sundt Construction, Inc.	\$92,321,565.00

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations,

Proposals, and related documents.

SECTION 3. That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

SECTION 4. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2026.

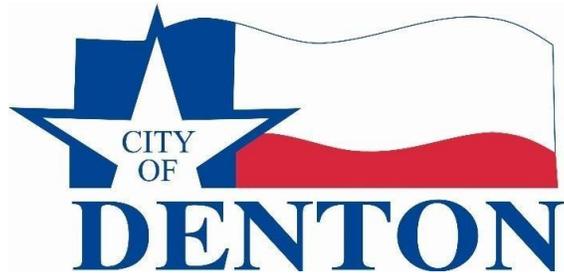
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush



Docusign City Council Transmittal Coversheet

RFP	8289
File Name	CMAR Construction Phase for PCWRP Expansion
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	



CITY OF DENTON, TEXAS

CONSTRUCTION MANAGER AT RISK FOR PCWRP HEADWORKS AND EXPANSION PROJECT

**CONSTRUCTION MANAGER AT RISK
CONSTRUCTION PHASE SERVICES**

CONTRACT NO. 8289

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CITY OF DENTON

PCWRP HEADWORKS AND EXPANSION PROJECT

CONSTRUCTION MANAGER AT RISK CONSTRUCTION SERVICES

GMP No. 1

CONTRACT NO. 8289

THIS AGREEMENT, made and entered by and between City of Denton, hereinafter designated the “City” and Sundt Construction, Inc., hereinafter designated the “Construction Manager at Risk” or “CM@Risk”

RECITALS

- A.** The City Manager of the City of Denton, Texas, or their designee, is authorized and empowered by provisions of the City Charter to execute contracts for construction services.
- B.** The City intends to construct PCWRP Headworks and Expansion Project as more fully described in Exhibit A attached.
- C.** To undertake the Project the City has entered into a contract with Kimley-Horn and Associates, Inc. hereinafter referred to as the “Design Professional.”
- D.** The CM@Risk has represented to the City the ability to provide the construction phase services described herein and to construct the Project and based on this representation the City engages the CM@Risk to provide these services and construct the Project.
- E.** Contract No. 8289 has been executed previously between City and CM@Risk to perform Preconstruction Phase services. Those services may continue during the duration of this Construction Phase Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the CM@Risk as follows:

Article 1 - Definitions

“Agreement” (“Contract”) means this written document signed by the City and CM@Risk covering the construction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract. The terms Agreement and Contract shall be used interchangeably throughout unless specifically stated otherwise.

“Approved GMP” means any GMP or GMP amendment agreed to by the parties in accordance with this Agreement.

“Application for Payment” – See definition for Payment Request.

“Architect” means the qualified, licensed person, firm or corporation who furnishes architectural services required for the Project.

“Asbestos” means asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, or actinolite or any material that contains one percent or more of any asbestiform variety. Refer to the Texas Administrative Code, Title 25, Chapter 296.

“Change Directive” means a written order prepared and signed by City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

“Certificate of Substantial Completion” has the meaning given such term in Subsection 4.1.5.

“Change Order” means a type of contract amendment issued after execution of this Agreement or future GMP Amendments signed by City and CM@Risk, agreeing to changes to an agreement. The Change Order will state the following: the addition, deletion, or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Times or other modifications to Contract terms.

“City (“Owner” or “OWNER”) means the City of Denton, a municipal corporation, with whom CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to said Contract. Regulatory activities handled by the City of Denton Developmental Services, Fire, Engineering, Facilities, Municipal Electric, and Planning Departments or any other City Department are not subject to the responsibilities of the City under this Agreement.

“City’s Representative” means the person designated in Subsection 8.3.1.2.

“City’s Senior Representative” means the person designated in Subsection 8.3.1.1.

“CM@Risk” means the firm selected by the City to provide construction services as detailed in this Agreement.

“CM@Risk’s Representative” means the person designated in Subsection 8.3.2.2.

“CM@Risk’s Senior Representative” means the person designated in Subsection 8.3.2.1.

“Contingency, Marketplace Risk” – A fund to cover the costs of cost escalation, supply chain interruptions, and buyout decisions made for the City’s benefit that may have more risk than a normal subcontract award. Use and management of the Marketplace Risk Contingency is described in Section 5.1.3.

“Contingency, CM@Risk’s” – A fund to cover cost growth during the Project used at the discretion of the CM@Risk usually for costs that result from Project circumstances. Use and management of the CM@Risk’s Contingency is described in Section 5.1.4.

“Contingency, Owner’s” – A fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. Use and management of the Owner’s Contingency is described in Section 5.1.5.

“Contract Documents” means the following items and documents in descending order of precedence executed by the City and the CM@Risk: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

“Construction Documents” The plans, specifications, and drawings prepared by the Design Professional and issued as approved for construction meaning the documents are sealed by the Design Professional, signed and acceptable for permitting.

“Construction Fee” means the lump sum amount for CM@Risk’s administrative costs for branch or home office overhead, and profit at the time of GMP.

“Contract Price” means the amount or amounts set forth in Article 5.

“Contract Time” means the Days as set forth in Article 4 the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Project.

“Cost of the Work” The direct costs or stipulated rates necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees (if not paid for by City), materials testing, General Conditions Costs, and related items. See Exhibit X – Cost of the Work and Exhibit Y – General Conditions Costs for more definitions of these terms. The Cost of the Work shall not include the CM@Risk’s Construction Fee.

“Critical Path” means the sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.

“Day(s)” mean calendar days unless otherwise specifically noted in the Contract Documents.

“Preconstruction Phase Contract” means the agreement between the City and CM@Risk for services provided by the CM@Risk during the design phase which may include the following: design recommendations, project scheduling, constructability reviews, alternate systems evaluation, cost estimates, MBE/WBE/SBE utilization, subcontractor bid phase services, and GMP preparation.

“Design Professional” means a qualified, licensed design professional, including an Engineer or Architect, who furnishes design and/or construction administration services required for the Project. A Design Professional is referenced in Recital C, above.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Engineer” The qualified, licensed person, firm or corporation who furnishes engineering services required for the Project.

“Final Acceptance” means the completion of the Work as prescribed in Section 4.2.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“General Conditions Costs” Includes those Cost of Work items shown in Exhibit Y- General Conditions Costs.

“Guaranteed Maximum Price” or “GMP” means the sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, taxes, and CM@Risk’s Contingency including authorized adjustments.

“GMP Amendment” means an amendment, executed in writing and signed by both parties, to the GMP.

“GMP Plans and Specifications” means the plans and specifications upon which the Guaranteed Maximum Price proposal is based as listed in the GMP proposal.

“Hazardous Environmental Condition” means the presence at the site of Asbestos, PCB’s, Petroleum, Hazardous Waste, Radioactive Material, or other materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

“Hazardous Material or Substance” includes any material in such quantity, concentration, and physical or chemical characteristics including, but not limited to, ignitability or toxicity, so as to be capable of posing an unreasonable risk to health, safety and/or property if released into the atmosphere, transported, stored, or disposed of.

“Hazardous Waste” means any solid waste listed as hazardous or possesses one or more hazardous characteristics as defined in the federal waste regulations, as amended from time to time.

“Legal Requirements” means all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders, and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Milestones” - A principal event in the performance of the Work that the Contract requires CM@Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the CM@Risk to start Work. Such notice shall be provided to the CM@Risk at least seven days prior to the commencement date stipulated herein and shall be provided no later than 30 days after the GMP proposal is approved by the City and all the required documentation is received by the City.

“Payment Request” means the City form used by the CM@Risk to request progress payments for Work in accordance with Article 7.

“PCB’s” means polychlorinated biphenyls.

“Performance Period” means the period of time allotted in the Contract Documents to substantially complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP proposal and shown on the Project Schedule.

“Petroleum” means petroleum including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM@Risk to illustrate materials or equipment for some portion of the Work.

“Project” means the Work to be completed in the execution of this Agreement as amended and as described in the Recitals above and in each Approved GMP.

“Project Schedule” means a schedule, prepared and maintained by CM@Risk, describing the sequence and duration of the activities comprising the CM@Risk’s plan to accomplish the Work within the Contract Times.

“Project Record Documents” means the documents created pursuant to Section 2.10.

“Radioactive Material” Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

“Samples” means physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be evaluated.

“Shop Drawings” mean drawings, diagrams, schedules, submittals and other data specially prepared for the Work by the CM@Risk or a Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

“Site” means the land or premises on which the Project is located generally described in in Exhibit A.

“Specifications” means the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto as listed in the GMP proposal.

“Subcontractor” means an individual or firm having a direct contract with the CM@Risk or any other individual or firm having a contract with the aforesaid individual or firm at any tier, who undertakes to perform a part of the construction phase Work for which the CM@Risk is responsible.

“Subconsultant” - A person, firm or corporation having a contract with the CM@Risk to furnish services required as its independent professional associate or consultant with respect to the Project.

“Substantial Completion” means when the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) receipt of written confirmation after final inspections by the applicable electrical, plumbing, City Fire Marshall, health department, and other local and state officials having jurisdiction, stating the project is ready for occupancy by the City; (ii) all systems in place, and confirmed to be fully functional to satisfaction of the City and its representatives; (iii) all materials and equipment installed; (iv) all systems reviewed and accepted by the City; (v) draft O&M manuals and record documents reviewed and accepted by the City; (vi) City operation and maintenance training complete; (vii) landscaping and site work; and (viii) final cleaning. In addition to the other requirements of the Contract Documents, and without limitation, the CM@Risk must also have obtained the written approval and issuance of any occupancy permits required by the laws of local government(s) and the State of Texas before the CM@Risk shall be deemed to have achieved Substantial Completion. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed letter pursuant to Subsection 2.4.3.

“Supplier” means a manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with CM@Risk or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

“Work” means the entire completed construction or the various separately identifiable parts thereof, required by the Agreement to be furnished and installed during the construction phase. “Work” includes and is the result of performing or furnishing supervision and labor; and furnishing and incorporating materials, resources, and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

Article 2 – CM@Risk’s Services and Responsibilities

2.0 The CM@Risk shall furnish any and all supervision, labor, materials, equipment, transportation, utilities, services, and facilities required to perform all Work required by the Contract Documents, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CM@Risk in Denton, Texas. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Project’s Contract Documents as modified. It is not required that the services be performed in the sequence in which they are described.

2.1. General Services

2.1.1. CM@Risk’s Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. CM@Risk’s Representative shall communicate regularly with City but not less than once a week and shall be vested with the authority to act on behalf of CM@Risk. CM@Risk’s Representative may be replaced only with the written consent of City.

2.1.2 City’s Project Management Information System (Procore)

2.1.2.1 The CM@Risk will be required to maintain all project records in electronic format. The City provides a web-based project management database which the CM@Risk will be required to utilize in the fulfillment of the contract requirements. Although this electronic platform does not fulfill this requirement in its entirety, the CM@Risk will be required to utilize this platform as the basis for this Work. Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.

2.1.2.2 The CM@Risk can expect to use Procore to process all primary level tri-partite contract documents related to the construction phase of the Project including but not limited to: requests for interpretation/information, potential Change Orders, Change Orders, construction meeting minutes, Submittals, Design Professional’s supplemental instructions and Payment Requests.

2.1.2.3 The CM@Risk will be required to process information into electronic digital form. In order to fulfill this requirement, the CM@Risk shall provide all necessary equipment to perform the functions necessary to generate, convert, store, maintain, connect to Procore, and transfer electronic data.

2.1.2.4 CM@Risk shall provide a computerized networked office platform with broadband internet connectivity. Wired or wireless is acceptable. This platform shall function well in a web-based environment utilizing an internet browser compatible with the City Procore system.

2.2 Government Approvals and Permits

2.3.1 Unless otherwise provided, CM@Risk shall obtain or assist the City to obtain all necessary permits, approvals, and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. **The CM@Risk is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.**

2.3.2 Copies of these permits and notices must be provided to the City’s Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City’s Representative. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice

requirements.

2.3.3 City shall be responsible for all City of Denton review and permit(s) fees for building and demolition permits. City will also pay review and permit fees for grading and drainage, water, sewer, right-of-way, gas service, electrical service, and landscaping; assessments against the property, including property tax, developmental excise and similar taxes; sewer, water, and related utility tap fees; and sewer plant improvement fees, unless exempted under Texas law. City shall also pay for utility design fees for permanent services.

2.3.4 CM@Risk shall be secure and pay for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded not specifically listed in Subsection 2.3.3 above. Specifically, and without limitation, the CM@Risk is responsible for the cost of meter(s), and all utility bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the CM@Risk's responsibility.

2.4 Pre-construction Conference

2.4.1 Prior to the commencement of any Work, the City's Representative will schedule a pre-construction conference.

2.4.2 The purpose of this conference is to establish a working relationship between the CM@Risk, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Record Project Documents required, and emergency telephone numbers for all representatives involved in the course of construction.

2.4.3 The Notice to Proceed date will be agreed to. After the meeting a Notice to Proceed letter will be issued confirming the construction start date, Performance Period, and, if applicable, the Substantial Completion date. If a Substantial Completion date is established the conditions of the Substantial Completion will be listed.

2.4.4 The CM@Risk shall provide a schedule of values based on the categories used in the buyout of the Work but not greater than the approved GMP and identifying the CM@Risk's Contingency. The schedule of values will subdivide the Work into all items comprising the Work.

2.4.5 Minimum attendance by the CM@Risk shall be the CM@Risk's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the CM@Risk's safety officer.

2.5 Control of the Work

2.5.1 Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, CM@Risk shall provide through itself, its Vendors or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit CM@Risk to complete the Work consistent with the Contract Documents.

2.5.2 CM@Risk shall perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents. CM@Risk shall at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction.

2.5.3 CM@Risk, the CM@Risk's Representative or other authorized representative shall be present

at the Site at all times that construction activities are taking place.

- 2.5.3.1** All elements of the Work shall be under the supervision of a superintendent employed by the CM@Risk for the purpose; or their designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.
- 2.5.4** In the event of noncompliance with this Section, the City may require the CM@Risk to stop or suspend the Work in whole or in part. Where the Contract Documents require that a particular product be installed and/or applied, or the installation and/or application be observed by an entity approved by the manufacturer, it is the CM@Risk's responsibility to ensure the Subcontractor employed for such Work is approved by the manufacturer; or their installation and/or application is so observed.
- 2.5.5** Before ordering materials or doing work, the CM@Risk and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No increase to the approved GMP will be allowed because of differences between actual dimensions and the dimensions indicated in the Contract Documents; differences, which may be found, shall be submitted to the City for resolution before proceeding with the Work.
- 2.5.6** The CM@Risk shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM@Risk with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the City at once.
- 2.5.7** The CM@Risk shall establish and maintain all primary building and construction grades, lines, levels, and benchmarks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a licensed civil engineer or surveyor in the State of Texas.
- 2.5.8** Any person employed by the CM@Risk or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful, and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CM@Risk or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. **THE CM@RISK OR SUBCONTRACTOR SHALL HOLD THE CITY HARMLESS FROM DAMAGES OR CLAIMS WHICH MAY OCCUR IN THE ENFORCEMENT OF THIS SECTION.**
- 2.5.9** CM@Risk assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.5.10** CM@Risk shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, CM@Risk and the City agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.6 Control of the Site

- 2.6.1** Throughout all phases of construction, including suspension of Work, CM@Risk shall keep the Site reasonably free from debris, trash, and construction wastes to permit CM@Risk to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CM@Risk shall remove all debris, trash, construction wastes, materials, equipment, machinery, and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.

- 2.6.2** CM@Risk shall take all reasonable steps, procedures, or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the local requirements.
- 2.6.3** CM@Risk shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@Risk shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.
- 2.6.4** Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the CM@Risk. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of the CM@Risk.
- 2.6.5** See Exhibit W – Use of Site, Delivery & Storage for more detailed information on the CM@Risk's responsibilities for maintaining and using the site.
- 2.7 Shop Drawings, Product Data and Samples**
- 2.7.1** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CM@Risk proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 2.7.2** The CM@Risk shall review, approve, verify, and submit to the City each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit B as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by the CM@Risk, which are not required by the Contract Documents, may be returned without action.
- 2.7.3** The CM@Risk shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the City. Such Work shall be in accordance with approved submittals.
- 2.7.4** By approving, verifying, and submitting Shop Drawings, Product Data, Samples, and similar submittals, the CM@Risk represents that the CM@Risk has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 2.7.5** The CM@Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CM@Risk has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation. The CM@Risk shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval thereof.
- 2.7.6** The CM@Risk shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the City on previous submittals.
- 2.7.7** Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.

2.7.8 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

2.8 Quality Control, Testing and Inspection

2.8.1 The CM@Risk shall follow the project-specific construction quality control requirements defined in the Construction Management Plan created, reviewed, and approved under the Preconstruction Phase Agreement. The following requirements are in addition to those found in the Construction Management Plan, and shall be incorporated into the Construction Management Plan for the construction phase.

2.8.2 All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

2.8.3 All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances, or methods to be used in the Work may be subject to the inspection and approval or rejection by the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.

2.8.4 The procedures and methods used to sample, and test material will be determined by the City, in consultation with the Design Professional.

2.8.5 The City may select a pre-qualified City or independent testing laboratory and may perform additional acceptance testing at the City's cost.

2.8.5.1 When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance will be paid for by the CM@Risk. CM@Risk's Contingency cannot be utilized for the cost of re-testing.

2.8.5.2 When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

2.8.6 The CM@Risk will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.

2.8.7 At the option of the City, materials may be approved at the source of supply before delivery is started.

2.8.8 Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the CM@Risk as a Cost of the Work, unless otherwise provided in the Contract Documents or unless required by Chapter 2269 of the Texas Government Code.

2.8.9 CM@Risk's convenience and quality control testing and inspections shall be the sole responsibility of the CM@Risk and paid by the CM@Risk as a Cost of the Work.

2.9 Trade Names and Substitutions.

2.9.1 Contract Document references to equipment, materials, or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, substitute, or alternate items may be permitted, subject to the following:

2.9.2 The substitution shall be submitted by CM@Risk in writing to the City.

2.9.3 The CM@Risk shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same

use as that specified.

- 2.9.4** The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.
- 2.9.5** The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.
- 2.9.6** The CM@Risk if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.
- 2.9.7** The City will make the final decision and will notify the CM@Risk in writing as to whether the substitution has been accepted or rejected. If the City does not respond in a timely manner, the CM@Risk shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

2.10 Project Record Documents

- 2.10.1** During the construction period, the CM@Risk shall maintain at the jobsite a set of the Construction Document drawings, specifications and Shop Drawings for Project Record Document purposes.
- 2.10.1.1** The CM@Risk shall update these documents to indicate the actual installation where the installation varies appreciably from the original Construction Documents. Give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
- Dimensional changes to the drawings.
 - Revisions to details shown on drawings.
 - Depths of foundations.
 - Locations and depths of underground utilities.
 - Revisions to routing of piping and conduits.
 - Revisions to electrical circuitry & device locations.
 - Revisions to low voltage systems & controllers/sensors/device locations.
 - Actual equipment locations.
 - Locations of concealed internal utilities.
 - Changes made by Change Order.
 - Details not on original Contract Drawings.
- 2.10.1.2** Mark completely and accurately Project Record Construction Documents or Shop Drawings, when Shop Drawings are the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference to the Shop Drawings on the appropriate Construction Documents location.
- 2.10.1.3** Note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.
- 2.10.1.4** The CM@Risk shall as a condition of Substantial Completion, submit Project Record Drawing and Shop Drawings prints to the City or its representative for review and comment.
- 2.10.2.** Upon receipt of the reviewed Project Record Drawings from the City, the CM@Risk shall correct any deficiencies and/or omissions to the drawings and prepare for submission to the City within 14 Days.

2.11 Project Safety

- 2.11.2.** CM@Risk recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury, or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.
- 2.11.3.** CM@Risk assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 2.11.4.** CM@Risk shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@Risk's safety representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.
- 2.11.5.** The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@Risk's personnel, Subcontractors, and others as applicable.
- 2.11.6.** CM@Risk and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.
- 2.11.7.** CM@Risk will report in writing any safety-related injury, loss, damage, or accident arising from the Work to City's Representative in not less than four (4) hours (via email); follow up with a full, written report on details, causes and results of the incident within two (2) business days; and submit an incident prevention and "lessons learned" plan within one (1) week of the occurrence. To the extent mandated by Legal Requirements, report the incident as required to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 2.11.8.** CM@Risk's responsibility for safety under this Section is not intended in any way to relieve Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.12 Warranty

- 2.12.1** CM@Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- 2.12.2.** CM@Risk's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than CM@Risk or anyone for whose acts CM@Risk may be liable.
- 2.12.3.** CM@Risk's warranty obligation shall be for two years.
- 2.12.4.** Nothing in this warranty is intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this Section or the Contract Documents. CM@Risk will provide City with all manufacturers' warranties upon Substantial Completion.
- 2.12.5.** See Exhibit V – Warranty Requirements for more detailed information on the CM@Risk's warranty responsibilities.

2.13 Correction of Defective Work

- 2.13.2.** CM@Risk agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of two years from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.
- 2.13.3.** During the Work, CM@Risk shall take meaningful steps to commence correction of such nonconforming Work as notified by the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps during the Work, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk, and its surety, with written notice that City will commence correction of such nonconforming Work with its own forces.
- 2.13.4.** CM@Risk shall, take meaningful steps to commence correction of nonconforming Work subject to Section 2.12 above, within seven Days of receipt of written notice from City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps within such seven Day period, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk, and its surety, with written notice that City will commence correction of such nonconforming Work with its own forces.
- 2.13.5.** If City does perform such corrective Work, CM@Risk and/or its surety shall be responsible for all reasonable costs incurred by City in performing such correction.
- 2.13.6.** If the nonconforming Work creates an emergency requiring an immediate response, the CM@Risk will respond and initiate corrections within twenty-four hours.
- 2.13.7.** The two-year period referenced in Subsection 2.12.1 above applies only to CM@Risk's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies City may have regarding CM@Risk's other obligations under the Contract Documents.

Article 3 - City's Services and Responsibilities

3.1 Duty to Cooperate.

- 3.1.1** City shall, throughout the performance of the Work, cooperate with CM@Risk and perform its responsibilities, obligations, and services in a timely manner to facilitate CM@Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.
- 3.1.2** City shall furnish at the CM@Risk's request, at no cost to the CM@Risk, a CADD file of the Construction Documents in AutoCAD format compatible with City of Denton Engineering and Architectural Services Department CADD technology.
- 3.1.3** The City will, if needed, provide training in the use and operation of the Procore system.

3.2 City's Representative

- 3.2.1** City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner to permit CM@Risk to fulfill its obligations under the Contract Documents.
- 3.2.2** City's Representative shall also provide CM@Risk with prompt notice if it observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents.
- 3.2.3** The City may utilize its own or a third party's field staff to assist the City's Representative during construction in observing performance of the CM@Risk and performing other City functions. This field staff is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with an inspector from a City laboratory or materials testing and special inspections firm contracted to the City pursuant to Subsection 2.8.5.
 - 3.2.3.1** Through onsite observation of the Work in progress and field checks of materials and equipment, the field staff shall endeavor to provide protection against defects and deficiencies in the Work.
 - 3.2.3.2** The field staff will be authorized to review all Work and materials furnished. Such review may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.
 - 3.2.3.3** The field staff will not be authorized to issue instructions contrary to the Construction Documents or to act as a supervisor for the CM@Risk.
 - 3.2.3.4** The field staff shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.
 - 3.2.3.5** The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequence or procedures, or for safety precautions or programs or responsibility for the CM@Risk's failure to perform the work in accordance with Contract Documents.

3.3 Design Professional Services

- 3.3.1** The City may contract separately with one or more Design Professionals to provide services for the project. The Design Professional's contract(s) as well as other firms hired by the City to provide services on the project shall be furnished to the CM@Risk. The CM@Risk shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable

to the City and Design Professional.

- 3.3.2** The City may contract with the Design Professional or a designated third party to provide some or all of the following services during the performance of the Work.
 - 3.3.2.1** Provide oversight of the Work. The City and CM@Risk shall endeavor to communicate through the Design Professional or designated third party. Communications by and with the Design Professional's consultants shall be through the Design Professional.
 - 3.3.2.2** Make visits to the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and work in progress and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the City informed of progress of the Work and will endeavor to guard the City against defects and deficiencies in the Work. The Design Professional may have authority, but not the responsibility to reject construction which does not conform to the Construction Documents; and may require additional inspection or testing of the construction in accordance with Section 2.8.
 - 3.3.2.3** Review and approve or take other appropriate action upon the CM@Risk's submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.7.
 - 3.3.2.4** Interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the City or CM@Risk. The Design Professional's or designated third party's response to such requests will be made with reasonable promptness and within any time limits agreed upon.
 - 3.3.2.5** Prepare Change Orders and may authorize minor changes in the Work as provided in Subsection 6.6.1.
 - 3.3.2.6** Conduct reviews to determine Substantial Completion and Final Acceptance.
 - 3.3.2.7** Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the CM@Risk.
- 3.4** **City's Separate Contractors.** City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with, CM@Risk in order to enable CM@Risk to timely complete the Work consistent with the Contract Documents. Any City separate contractors will be subject to City insurance and subrogation requirements.
- 3.5** **Permit Review and Inspections.**
 - 3.5.1** If requested by the CM@Risk, the City's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.
 - 3.5.2** Regulating agencies of the City, such as Developmental Services, Fire and Planning Departments, enforce Legal Requirements. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

Article 4 - Contract Time

4.0. Contract Time.

- 4.0.1.** Contract Time shall start with the commencement date established in the Notice to Proceed for the first Approved GMP and end with Substantial Completion.
- 4.0.2.** Each GMP will establish a separate commencement date and a date of Substantial Completion and a Performance Period. The Performance Periods may not be sequential and may run concurrently. The Period to achieve Substantial Completion for each GMP shall be set forth in each GMP submission.
- 4.0.3.** CM@Risk agrees that it will commence performance of the Work and achieve the Performance Periods and Contract Time.
- 4.0.4.** All of the times set forth in this Article 4 shall be subject to adjustment in accordance Article 6.

4.1. Substantial Completion

- 4.1.1.** Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in Article 1. and with the criteria set forth in the Notice to Proceed.
- 4.1.2.** Prior to notifying the City in accordance with Subsection 4.1.3 below, the CM@Risk shall inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. The CM@Risk shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CM@Risk to complete all Work in accordance with the Contract Documents.
- 4.1.3.** CM@Risk shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.
- 4.1.4.** Within five (5) days of City's receipt of CM@Risk's notice, City and CM@Risk will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.
- 4.1.5.** If such Work is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and CM@Risk's responsibility for the Project's security, maintenance, utilities, and insurance pending Final Acceptance, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.
- 4.1.6.** City, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Subsection 4.1.5 above, (ii) CM@Risk and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and CM@Risk agree that City's use or occupancy will not interfere with CM@Risk's completion of the remaining Work.

4.2. Final Acceptance. Upon receipt of written notice that the Work or identified portions of the Work is ready for final acceptance, City, Design Professional and CM@Risk will jointly verify that the remaining items of Work have been completed as set forth in Subsection 4.1.5. The City will issue a Final Acceptance Letter and payment pursuant to Section 7.5.

4.3. Liquidated Damages.

4.3.1. CM@Risk recognizes that ***TIME IS OF THE ESSENCE*** for the CM@Risk to achieve Substantial Completion and City will suffer financial loss if the Work is not completed within the Contract Time. The Contractor also recognizes the delays, expense and difficulties involved in proving in a legal proceeding, the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, Contractor agrees that as liquidated damages for delay (but not as a penalty), Contractor shall pay City Two Thousand Dollars (\$2,000.00) for each day that expires after the Contract Time, as adjusted in accordance with this Contract, until the Day that Substantial Completion occurs.

4.3.2. The City may at its sole discretion deduct from any monies due or which may become due the CM@Risk, a sum as specified herein, for each and every calendar day that the Work shall remain uncompleted. This sum shall be considered, not as penalty, but as the cost(s) for substantial losses suffered by the public and the City. Liquidated damages are intended to compensate the City for the CM@Risk's failure to meet the deadlines set forth herein, and shall not excuse the CM@Risk from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The CM@Risk agrees that the sums in Section 4.3.1 are reasonable in light of the anticipated or actual harm caused by the delay and breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

4.3.3. The parties acknowledge, covenant, and agree that the daily basis and the amount set forth above for liquidated damages are reasonable because of the unique nature of the Project as a benefit to the public; the fact that inconvenience to the public will be one of the significant impacts of any failure by the CM@Risk to timely complete the Work; and that it is impracticable and extremely difficult to ascertain and determine the actual losses which would accrue to the City and the public. Permitting the CM@Risk to continue and finish the Work, or any portion thereof, after the time fixed for its completion, shall in no way operate as a waiver on the part of the City of any of its rights under the Contract.

4.4. Project Schedule

4.4.1. The Project Schedule approved as part of a GMP shall be updated and maintained throughout the Work.

4.4.2. The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CM@Risk of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

4.4.3. Updated Project Schedules shall be submitted monthly in electronic forms to the City as part of the Payment Request.

4.4.4. CM@Risk shall provide City with a monthly status report with each Project Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to Project Schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the GMP proposal and within the Contract Time. Each status report shall also include the following:

- Description of problem tasks (referenced to field instructions, requests for information)

- (RFI's), as appropriate.
 - Current and anticipated delays including:
 - Cause of the delay;
 - Corrective action and schedule adjustments to correct the delay;
 - Known or potential impact of the delay on other activities, Milestones, and the date of Substantial Completion.
 - Changes in construction sequence
 - Pending items and status thereof including but not limited to:
 - Time Extension requests;
 - Other items.
 - Substantial Completion date status:
 - If ahead of schedule, the number of calendar Days ahead;
 - If behind schedule, the number of calendar Days behind.
 - Other project or scheduling concerns
- 4.4.5.** City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CM@Risk from compliance with the requirements of the Contract Documents or be construed as relieving the CM@Risk of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.
- 4.4.6.** The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 4.4.6.1.** The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 4.4.6.2.** The CPM diagram schedule shall indicate all relationships between activities.
- 4.4.6.3.** The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work. Further, activities shall be included for, without limitation, any and all City franchised or private utilities required to be temporarily or permanently demolished, relocated or installed; design, procurement, furnishing and installing of equipment, information technology systems, security systems, furnishings, and other City improvements (whether installed by the CM@Risk or the City) required for the Work to be completely functional as intended. These Owner Activities will be shown in the schedule with the appropriate precursor and successor activities necessary for monitoring and evaluating the progress of the Owner Activities.
- 4.4.6.4.** The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values, but the Project Schedule is not required to be *cost-loaded*.
- 4.4.6.5.** The CPM diagram schedule shall show all critical submittals associated with each work activity and the review time for each submittal.
- 4.4.6.6.** The Project Schedule shall show Milestones, including Milestones for Owner-furnished information, utilities and improvements when those Milestones are interrelated with the CM@Risk activities.
- 4.4.6.7.** The Project Schedule shall include a Critical Path activity that reflects anticipated rain delay during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other approved source.

- 4.4.7.** The Project Schedule shall consider the City's and the other stakeholder occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 4.4.8.** Float time shall be as prescribed below.
 - 4.4.8.1.** The total Float within the overall Project Schedule, is not for the exclusive use of either the City or the CM@Risk but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract Milestones and the Project contract time.
 - 4.4.8.2.** The CM@Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the Project Schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.
 - 4.4.8.3.** Since Float time within the Project Schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in savings of time to the CM@Risk, etc.). In such an event, the CM@Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

Article 5- Contract Price

- 5.0.** The CM@Risk agrees at his own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the approved GMP proposal.
- 5.1. Contract Price.**
- 5.1.1.** The Contract Price will be as approved in the Guaranteed Maximum Price proposal attached as an Exhibit including an amount for Owner's Contingency.
- 5.1.2.** Guaranteed Maximum Price is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below. The CM@Risk is at risk to cover any additional Project costs. Any amounts in excess of the allowances and/or CM@Risk's Contingency shall revert to the City.
- 5.1.2.1** The Cost of the Work is a fixed lump sum.
- 5.1.2.2** The General Conditions Costs and the Construction Fee are firm fixed lump sums, but subject to adjustments as permitted in the Contract Documents.
- 5.1.3** CM@Risk's Contingency is an amount the CM@Risk may be used under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the City for increases in General Condition Costs. CM@Risk's Contingency is assumed to be a direct project cost so will have received all markups at the time of GMP submission.
- 5.1.4** When the CM@Risk utilize CM@Risk's Contingency funds, the CM@Risk shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CM@Risk shall deduct the amount of CM@Risk's Contingency funds used from the CM@Risk's Contingency line item and adding the same amount to the line item on the schedule of values where the funds were used. If the CM@Risk's Contingency funds are used for a new line item that was not given with the original schedule of values, that will be so indicated.
- 5.1.5** Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM@Risk, the sum of which will be the total contract price for construction. Markups for Construction Fee and taxes will be applied by the CM@Risk at the time that Owner's Contingency is used.
- 5.1.6** As a City public procurement project this Project is tax exempt. Appropriate tax exemption forms shall be provided to the CM@Risk.
- 5.1.7** The GMP is subject to adjustments made in accordance with Article 6 and by GMP Amendments to this Agreement.
- 5.1.8** GMP Amendments are cumulative not including CM@Risk Contingency. The amount of CM@Risk Contingency for each GMP amendment will be negotiated separately and shall reflect the CM@Risk's risk from that point in the project forward.
- 5.1.8.1** If the GMP requires an adjustment due to changes in the Work or other causes as allowed in the Contract Documents, the cost of such changes is determined subject to Article 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in Article 6.

Article 6 - Changes to the Contract Price and Time

6.1. Delays to the Work

- 6.1.1.** If CM@Risk is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CM@Risk is responsible, the Contract Times for performance shall be reasonably extended by Change Order.
- 6.1.2.** The CM@Risk shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary. Such notice shall not be later than fourteen (14) Days after such condition or event has been encountered.
- 6.1.3.** By way of example, events that will entitle CM@Risk to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate contractors), changes in the Work, Differing Site Conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.
- 6.1.4.** If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and that weather conditions had an adverse effect on the scheduled Substantial Completion.
- 6.1.4.1.** In allowing delays for weather, the City will be entitled to consider weather conditions prevailing throughout the entire Contract period. The City and CM@Risk will together reconcile actual working days lost and gained over the entire Contract period every ninety (90) days. The CM@Risk shall then adjust the activities for the schedule's Float reserves where those activities are carried in the CM@Risk's Project Schedule (if any).
- 6.1.5.** It is understood, however, that permitting the CM@Risk to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.
- 6.1.6.** In addition to CM@Risk's right to a time extension for those events set forth in this Section, CM@Risk shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond the control of both CM@Risk and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God. In the event of an occurrence under this Section, the CM@Risk and any Subcontractors will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail, and the CM@Risk and any Subcontractors continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Subcontractors of the CM@Risk shall immediately notify the CM@Risk, who shall then immediately notify the City Project Manager by telephone of any such circumstances or event (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a sufficient level of detail the circumstances causing the non-performance or delay in performance.
- 6.1.7.** If either the Work actually in place falls behind as reflected by the currently updated Project Schedule, or it becomes apparent or likely in the reasonable opinion of the City that the Work will not be completed within the Contract Time or in accordance with the CM@Risk's Project Schedule, due to delays caused by the CM@Risk or its subcontractors, the CM@Risk agrees it shall, as necessary, take some or all of the following actions (hereinafter referred to collectively as "Extraordinary Measures") at no additional cost to the City or their consultants, as required

to substantially eliminate, in the judgment of the City, the backlog of CM@Risk's Work on the Project:

- 6.1.7.1. Increase quantities of, without limitation, labor, supervision, material deliveries, equipment on site, and crafts as necessary;
- 6.1.7.2. Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing;
- 6.1.7.3. Reschedule activities to achieve maximum practical concurrence of accomplishment; and
- 6.1.7.4. Do whatever else is reasonably required by the City.
- 6.1.8. These Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The City's right to require Extraordinary Measures is solely for the purpose of ensuring the CM@Risk's compliance with the CM@Risk's Schedule.
- 6.1.9. In the event of such a delay, the City may also require the CM@Risk to immediately submit a Proposed Recovery Schedule for its review and approval, demonstrating to the City's satisfaction the effect of applying the necessary and continuing Extraordinary Measures required to recover the Substantial Completion date shown in the most currently approved Project Schedule.

6.2 Differing Site Conditions

- 6.2.1 If CM@Risk encounters a Differing Site Condition, CM@Risk will be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CM@Risk's cost and/or time of performance are adversely impacted by the Differing Site Condition.
- 6.2.2 Upon encountering a Differing Site Condition, CM@Risk shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. CM@Risk shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been further or substantially disturbed or altered.

6.3 Errors, Ambiguities, Discrepancies and Omissions.

- 6.3.1 If the CM@Risk observes errors, ambiguities, discrepancies, or omissions in the Contract Documents, they shall promptly notify the Design Professional and request clarification.
- 6.3.2 If the CM@Risk proceeds with the Work affected by such known errors, ambiguities, discrepancies, or omissions, without receiving such clarifications, they do so at their own risk. Adjustments involving such circumstances made by the CM@Risk prior to clarification by the Design Professional shall be at the CM@Risk's risk.

6.4 City Requested Change in Work.

- 6.4.1 The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.
- 6.4.2 Such alterations and changes shall not invalidate this Agreement nor release the surety and the CM@Risk agrees to perform the Work as altered, the same as if it has been a part of the

original Contract Documents.

6.4.3 The City will request a proposal for a change in Work from CM@Risk, and an equitable adjustment in the Contract Price and/or Contract Times shall be made based on a mutual agreed upon cost and time.

6.5. Legal Requirements.

6.5.1. The Contract Price and/or Contract Times shall be adjusted to compensate CM@Risk for the effects of any changes in the Legal Requirements enacted after the date of the Agreement or the date of the GMP proposal, affecting the performance of the Work.

6.6. Change Directives and Change Orders.

6.6.1. City and CM@Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

6.6.2. All changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents

6.7. Minor Changes in the Work

6.7.1. The City has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance, and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CM@Risk. The CM@Risk shall carry out such written orders promptly.

6.7.2. CM@Risk may make minor changes in Work, provided, however that CM@Risk shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@Risk.

6.7.3. Minor changes in Work will not involve an adjustment in the Contract Price and/or Contract Times.

6.8. Contract Price Adjustments

6.8.1. The increase or decrease in Contract Price resulting from a change in the Work shall be handled in accordance with the provisions of Section 2251.0521 of the Texas Government Code and determined by one or more of the following methods:

6.8.1.1. Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

6.8.1.2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; or

6.8.1.3. Estimated cost of the Work, General Conditions Costs, if applicable, Construction Fee and tax.

6.8.2. The markups for overhead and profit that shall be allowed on the Cost of the Work driven by each change shall be no greater than that specified in Section 6.8.5 below.

6.8.3. If an increase or decrease cannot be agreed to as set forth in Subsections 6.8.1.1 through 6.8.1.3 above and City issues a Change Directive, the cost of the change of the Work shall be determined by the verifiable, actual expenses and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit as shown in Section 6.8.5 below. CM@Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

- 6.8.4.** Cost of the Work for the purposes of this Section 6.8, and in calculating overhead and profit shall be limited to the following:
 - 6.8.4.1.** Costs of labor, including applicable and verifiable payroll taxes, fringe benefits required by agreement, workers' compensation insurance, and other employee costs approved by the City;
 - 6.8.4.2.** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
 - 6.8.4.3.** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the CM@Risk or others;
 - 6.8.4.4.** Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
 - 6.8.4.5.** Additional, verifiable payroll and subsistence costs incurred by the CM@Risk, Subcontractor, and Sub-subcontractor of field personnel directly attributable to the change.
- 6.8.5.** The allowance for the combined total of onsite and offsite overhead and profit included in the total cost to the City for proposed Change Orders shall be based on the following schedule
 - 6.8.5.1.** For the CM@Risk, for Work performed by the CM@Risk's own forces, CM@Risk's fee percentage shown in the GMP plus actual direct jobsite costs associated with the additional work, if any;
 - 6.8.5.2.** For the CM@Risk, for Work performed by the CM@Risk's Subcontractor, CM@Risk's fee percentage shown in the GMP plus actual direct jobsite costs associated with the additional work, if any;
 - 6.8.5.3.** For each Subcontractor or sub-Subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor's own forces, ten percent (10%) of the cost;
 - 6.8.5.4.** For each Subcontractor, for Work performed by the Subcontractor's sub-Subcontractors, five percent (5%) of the amount due the sub-Subcontractor;
 - 6.8.5.5.** Under no circumstance shall costs of the CM@Risk's supervisory, management, administrative or other office personnel, regardless of where stationed, be paid as cost of the Work for such a change. Conversely, the CM@Risk shall be compensated for such personnel within the overhead and profit percentage specified in this Section 6.8.4.
 - 6.8.5.6.** In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can immediately be seen by inspection, shall be accomplished by a complete itemization of quantities and costs including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also;
 - 6.8.5.7.** When both additions and credits are involved in any change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any; and
 - 6.8.5.8.** Overtime, when specifically authorized by the City and not as a requirement for the CM@Risk to fulfill its obligations under this Agreement, shall be paid for by the City on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the City for overtime for CM@Risk caused delays.

- 6.8.6.** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to City or CM@Risk because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 6.8.7.** If City and CM@Risk disagree upon whether CM@Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM@Risk shall resolve the disagreement pursuant to Article 8 hereof.
- 6.8.7.1.** As part of the negotiation process, CM@Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.
- 6.8.7.2.** If the parties are unable to agree and City expects the CM@Risk to perform the services in accordance with City's interpretations, CM@Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM@Risk (i) directing CM@Risk to proceed and (ii) specifying City's interpretation of the services that are to be performed unless otherwise prohibited under Section 2251.0521 of the Texas Government Code.
- 6.8.8. Emergencies.** In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Section shall be determined as provided in this Article.

Article 7- Procedure for Payment

- 7.0.** For and in consideration of the faithful performance of the Work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the City and to its satisfaction, the City agrees to pay the said CM@Risk the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, taxes, if any, and the CM@Risk's Construction Fee, but no more than the GMP as adjusted by any Change Orders. Payment for the specific work under this Agreement will be made in accordance with payment provisions detailed below.
- 7.1. GMP Payment Request**
- 7.1.1.** At the pre-construction conference prescribed in Section 2.4, CM@Risk shall submit for City's review and approval a schedule of values. The schedule of values will serve as the basis for monthly progress payments made to CM@Risk throughout the Work.
- 7.1.2.** At least five (5) working days prior to the date established for a Payment Request, the CM@Risk shall submit an updated Project Schedule and meet with the City's Representative to review the progress of the Work as it will be reflected on the Payment Request.
- 7.1.3.** The Payment Request shall constitute CM@Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that all Work will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project and payment, therefore.
- 7.1.4.** The Payment Request may request payment for stored equipment and materials if construction progress is in reasonable conformance with the approved Project Schedule.
- 7.1.4.1.** For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances upon payment, therefore.
- 7.1.4.2.** For materials and equipment stored off the Site and included in Payment Request, the City must approve the storage. The material and equipment must be stored within a City of Denton approved location and be accessible for City's inspection. The CM@Risk must protect the City's interest and shall include applicable insurance, bonding, storage, and transportation to the Site.
- 7.1.4.3.** All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.
- 7.1.5.** CM@Risk shall submit payment requests to the City at the beginning of each month beginning with the first month after the construction Notice to Proceed.
- 7.1.6.** With every Payment Request for the Work, CM@Risk will submit an affidavit stating that the CM@Risk has complied with the requirements of Chapter 2258, Texas Government Code. The parties hereto agree that any electronic copy of such affidavit shall be treated as an original for all intents and purposes.
- 7.2. Payment of GMP**
- 7.2.1.** City shall make payment in accordance with the provisions of this Contract and Chapter 2251 of the Texas Government Code. Payment will be made no later than thirty (30) Days after the Payment Request is received by the City, but in each case less the total of payments previously made, and less amounts properly retained under Section 7.3 below.

7.2.2. City shall pay CM@Risk all amounts properly due. If City determines that there is an error in the Payment Request and the CM@Risk is not entitled to all or part of a Payment Request, it will notify CM@Risk in writing within twenty-one (21) Days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@Risk must take to rectify City's concerns. CM@Risk and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, CM@Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof.

7.3. Retention on GMP

7.3.1. City will retain five percent (5%) of each Payment Request amount provided.

7.4. Substantial Completion. Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to CM@Risk all retained amounts relating, as applicable, to the entire Work or substantially completed portion of the Work, less an amount of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

7.5. Final Payment

7.5.1. After receipt of a final Payment Request, City shall make final payment 30 days after the receipt by the City, provided that CM@Risk has completed all of the Work in conformance with the Contract Documents and a Final Acceptance Letter has been issued by the City.

7.5.2. At the time of submission of its final Payment Request, CM@Risk shall provide the following information:

7.5.2.1. An affidavit that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, material, equipment, taxes, or other items performed, furnished or incurred for or in connection with the Work which will in any way affect City's interests;

7.5.2.2. A general release executed by CM@Risk waiving, upon receipt of final payment by CM@Risk, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment;

7.5.2.3. Conditional waivers and releases executed by all Subcontractors; and

7.5.2.4. Consent of CM@Risk's surety, if any, to final payment (original with raised seal).

7.6. Payments to Subcontractors or Suppliers

7.6.1. CM@Risk shall pay its Subcontractors or suppliers within ten (10) Days of receipt of each progress payment from the City. The CM@Risk shall pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the CM@Risk shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. CM@Risk shall pay Subcontractors or suppliers the reduced retention within ten (10) Days of the payment of the reduction of the retention to the CM@Risk. No contract between CM@Risk and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein.

7.6.2. If the CM@Risk fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CM@Risk agrees that the City may take such actions:

7.6.2.1. To hold the CM@Risk in default under this Agreement;

- 7.6.2.2. Withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;
- 7.6.2.3. Reject all future offers to perform work for the City from the CM@Risk for a period not to exceed one year from Substantial Completion date of this Project; or
- 7.6.2.4. Terminate this Agreement.
- 7.6.3. All funds paid to the CM@Risk are paid in trust and shall be used for payment of the Subcontractors and Suppliers who have performed work on the Project before the CM@Risk may use any of the funds for any other purpose. Nothing in this provision shall prohibit the CM@Risk from withholding any funds in dispute or back charges or offsets under the provisions of the Subcontract. The CM@Risk shall include a trust fund provision in each subcontract requiring the subcontractor to hold any payment its receives in trust and to use them for payment of its subcontractors and suppliers who have performed work on the Project before Subcontractor may use the funds for any other purpose.
- 7.6.4. Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.
- 7.6.5. CM@Risk shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

7.7. Record Keeping, Audits and Finance Controls

- 7.7.1. Full and detailed records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to the Cost of the Work for this Project and records of accounts between the City and CM@Risk shall be kept on a generally recognized accounting basis consistently applied, and shall be available for five years after Final Acceptance of the Project, or for such longer period as may be required by law. The accounting and control systems shall be as necessary for proper financial management under this Agreement; and as required to substantiate all costs incurred to the satisfaction of the City.
- 7.7.2. The City, its authorized representative, and/or the appropriate federal agency (if any), reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.
 - 7.7.2.1. Specifically, the City and the City's authorized auditors shall, during regular business hours and upon reasonable notice, be afforded access to electronically or within 50 miles of Denton, and shall be permitted to audit, inspect and copy, the CM@Risk's records and accounts, including complete documentation supporting actual, direct and "bare" labor costs, job-cost coded labor reports, accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other information or data relating to this Agreement.
- 7.7.3. The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading, or inaccurate cost and pricing data.
- 7.7.4. The CM@Risk shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.
- 7.7.5. The City reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

Article 8- Claims and Disputes

8.0. Requests for Contract Adjustments and Relief.

- 8.0.1.** If either CM@Risk or City believes that it is entitled to relief against the other for any event arising out of or related to the Contract, such party shall provide written notice to the other party of the basis for its claim for relief.
- 8.0.2.** Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.
- 8.0.3.** In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) Days or other timeframes agreed to by both parties, in writing, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 8.0.4.** Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

8.1. Dispute Avoidance and Resolution

- 8.1.1.** The parties are fully committed to working with each other throughout the Project and agree to always communicate regularly with each other so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@Risk and City each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays, and disruptions to the Work.
- 8.1.2.** CM@Risk and City will first attempt to resolve disputes or disagreements at the field level through discussions between CM@Risk's Representative and City's Representative.
- 8.1.3.** If a dispute or disagreement cannot be resolved through CM@Risk's Representative and City's Representative, CM@Risk's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. Should this effort be unsuccessful then the parties may proceed to take appropriate action to enforce any rights or obligations pursuant to the provisions of the Contract.

- 8.2. Duty to Continue Performance** Unless provided to the contrary in the Contract Documents or as provided by statute, CM@Risk shall continue to perform the Work and City shall continue to satisfy its payment obligations to CM@Risk, pending the final resolution of any dispute or disagreement between CM@Risk and City.

8.3. Representatives of the Parties

8.3.1. City's Representatives

- 8.3.1.1.** City designates the City Engineer or their designee as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Subsection 8.1.3.
- 8.3.1.2.** City designates the City's project manager as its City's Representative, which individual has

the authority and responsibility set forth in Subsection 8.1.2.

8.3.2. CM@Risk's Representatives

8.3.2.1. CM@Risk designates the individual listed below as its Senior Representative ("CM@Risk's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Subsection 8.1.3:

Matt Bothun, Senior Rep.
125 East John W Carpenter Freeway
Irving, TX 75062
Mabothun@sundt.com

8.3.2.2. CM@Risk designates the individual listed below as its CM@Risk's Representative, which individual has the authority and responsibility set forth in Subsection 8.1.2:

Justin Wilson, Field Level
125 East John W Carpenter Freeway
Irving, Tx 75062
jrwilson@sundt.com

Article 9 – Suspension and Termination

9.0. City's Right to Stop Work

- 9.0.1.** City may, at its discretion and without cause, order CM@Risk in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive Days.
- 9.0.2.** CM@Risk may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City.

9.1. Termination for Convenience

- 9.1.1.** Upon receipt of written notice to CM@Risk, City may, at its discretion and without cause, elect to terminate this Agreement. In such event, City shall pay CM@Risk only the direct value of its completed Work and materials supplied as of the date of termination and the reasonable costs and expenses attributable to such termination. CM@Risk shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead.
- 9.1.2.** If the City suspends the Work for 181 consecutive Days or more, such suspension shall be deemed a termination for convenience.
- 9.1.3** Upon such termination, the CM@Risk shall proceed with the following obligations:
 - 9.1.3.1** Stop Work as specified in the notice.
 - 9.1.3.2** Place no further subcontracts or orders.
 - 9.1.3.3** Terminate all subcontracts to the extent they relate to the Work terminated and finalize all settlement proposals.
 - 9.1.3.4** Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of the CM@Risk and which the City has or may acquire an interest.
- 9.1.4** The CM@Risk shall submit complete termination inventory schedules no later than 120 Days from the date of the notice of termination.
- 9.1.5** The City shall pay CM@Risk the following.
 - 9.1.5.1** The direct, verifiable value of its completed Work and materials supplied as of the date of termination.
 - 9.1.5.2** The reasonable, verifiable costs and expenses attributable to such termination.
 - 9.1.5.3** CM@Risk shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead. Neither shall the CM@Risk be entitled to any costs for lost opportunity, or any other similar, consequential damages. If it appears the CM@Risk would have sustained a loss on the entire Work had it been completed, the CM@Risk shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.
- 9.1.6** The CM@Risk shall maintain all records and documents for five years after final settlement. These shall be maintained and subject to auditing as prescribed in Section 7.7.

9.2. City's Right to Perform and Terminate for Cause

- 9.2.1.** If the City provides the CM@Risk with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CM@Risk fails to comply in a time frame specified, the City may have a portion of the Work included in the written order accomplished by other sources.
- 9.2.2.** If CM@Risk persistently fails to: (i) provide a sufficient number of skilled workers; (ii) supply the materials required by the Contract Documents; (iii) comply with applicable Legal Requirements; (iv) timely pay, without cause, Subconsultants and/or Subcontractors; (v) prosecute the Work with promptness and diligence to ensure that the Work is completed within the Contract Times, as such times may be adjusted; or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Subsections 9.2.3 and 9.2.4 below.
- 9.2.3.** Upon the occurrence of an event set forth in Subsection 9.2.2 above, City may provide written notice to CM@Risk, with a copy to the surety, if any, that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) Days of CM@Risk's receipt of such notice.
- 9.2.3.1.** If CM@Risk fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to CM@Risk, with a copy to the surety, if any, of its intent to terminate within an additional seven (7) Day period.
- 9.2.3.2.** If CM@Risk, within such second seven (7) Day period, fails to cure, or reasonably commence to cure, such problem, then City may declare the Agreement terminated for default by providing written notice to CM@Risk of such declaration, with a copy to the surety, if any.
- 9.2.4.** Upon declaring the Agreement terminated pursuant to Subsection 9.2.3.2 above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials which have been purchased for the performance of the Work, all of which CM@Risk hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 9.2.5.** In the event of such termination, CM@Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM@Risk will only be entitled to be paid for Work performed and accepted by the City prior to its default.
- 9.2.6.** If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@Risk shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the procurement and defense of claims arising from CM@Risk's default.
- 9.2.7.** If City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 9.1.

Article 10 - Insurance and Bonds

10.0. Insurance Requirements

10.0.1 CM@Risk and Subcontractors shall procure and maintain until all of their obligations under this agreement have been discharged, including until any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property that may arise from or in connection with the performance of the Work hereunder by the CM@Risk, their agents, representatives, employees, or Subcontractors.

10.0.2 The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

10.0.3 The City in no way warrants that the minimum limits contained herein are sufficient to protect the CM@Risk from liabilities that might arise out of the performance of the Work under this Agreement by the CM@Risk, their agents, representatives, employees, or subcontractors. CM@Risk is free to purchase such additional insurance as may be determined necessary.

10.1 Minimum Scope and Limits of Insurance. CM@Risk shall provide coverage with limits of liability not less than those stated below:

10.1.1 Commercial General Liability – Occurrence Form
Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

- General Aggregate/for this Project \$2,000,000/\$1,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

The policy shall include endorsement CG2503 Amendment of limits (designated project or premises) in order to extend the policy’s limits specifically to the project in question.

The policy shall be endorsed to include the following additional insured language: **“The City of Denton, its Officials, and Employees shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk. This policy shall provide a blanket waiver of subrogation in favor of the City of Denton. A copy of the endorsement or other policy provisions naming the City as an additional insured to the insurance policy and providing a blanket waiver of subrogation in favor of the City of Denton, its Officials, and Employees shall be attached to the certificate of insurance.”**

10.1.2 Automobile Liability - Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL) \$1,000,000

The policy shall be endorsed to include the following additional insured language: **“The City of Denton, its Officials, Employees, and Volunteers shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk, including automobiles owned, leased, hired or borrowed by the CM@Risk This policy shall provide a blanket waiver of subrogation in favor of the City of Denton. A copy of the endorsement or other policy provisions naming the City as an additional insured to the insurance policy and providing a blanket waiver of subrogation in favor of the City of Denton, its Officials, and Employees shall be attached to the certificate of insurance.”**

10.1.3 Workers’ Compensation and Employers’ Liability
Workers’ Compensation

Statutory

Employers' Liability	
Each Accident	\$100,000
Disease - Each Employee	\$100,000
Disease – Policy Limit	\$500,000

This policy shall provide a blanket waiver of subrogation in favor of the City of Denton. A copy of the endorsement or other policy provisions providing a blanket waiver of subrogation in favor of the City of Denton, its Officials, and Employees shall be attached to the certificate of insurance.”

10.1.4 Builders' Risk Insurance or Installation Floater

In an amount equal to the initial Contract Price plus additional coverage equal to Contract Price for all subsequent Amendments and/or Change Orders.

10.1.4.1 The City of Denton, its Officials, and Employees, the CM@Risk, and Subcontractors, shall be **named as Additional Insureds** on the policy.

10.1.4.2 Coverage shall be written on an all risk, replacement cost basis and **shall include coverage for flood and earth movement.**

10.1.4.3 Policy shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the City of Denton, has an insurable interest in the property required to be covered.

10.1.4.4 Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.

10.1.4.5 Policy must provide coverage from the time any covered property becomes the responsibility of the CM@Risk, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.

10.1.4.6 Loss, if any, shall be adjusted with and made payable to the City of Denton as Trustee for the insureds as their interests may appear.

10.1.4.7 **This policy shall provide a blanket waiver of subrogation in favor of the City of Denton. A copy of the endorsement or other policy provisions naming the City as an additional insured to the insurance policy and providing a blanket waiver of subrogation in favor of the City of Denton, its Officials, and Employees shall be attached to the certificate of insurance.”**

10.1.4.8 CM@Risk is responsible for the payment of all policy deductibles.

10.2 Additional Insurance Requirements. The policies shall include, or be endorsed to include the following provisions:

10.2.1 On insurance policies where the City of Denton is named as an additional insured, the City of Denton shall be an additional insured to the full limits of liability purchased by the CM@Risk even if those limits of liability are in excess of those required by this Agreement.

10.2.2 The CM@Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

10.2.3 Coverage provided by the CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

10.2.4 PROFESSIONAL LIABILITY INSURANCE

If CONTRACTOR, SUBCONTRACTOR, or SUBCONSULTANT is a licensed or certified person who renders professional services, then Professional Liability Insurance to provide coverage against any claim which the CONTRACTOR, SUBCONTRACTOR, or SUBCONSULTANT becomes legally obligated to pay as damages arising out of the performance of professional services caused by any negligent error, omission or act with minimum limits of \$1,000,000.00 per claim, \$2,000,000.00 annual aggregate.

10.3 **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage, materially changed, or endorsed to lower limits except after thirty (30) Days prior written notice has been given to the City. Such notice shall be sent directly to the City Senior Representative and shall be sent by certified mail, return receipt requested.

10.4 **Acceptability of Insurers.** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Texas and with an "A.M. Best" rating of at least A or better. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

10.5 Verification of Coverage

10.5.1 CM@Risk shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

10.5.2 All certificates and endorsements are to be received and approved by the City before Work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of Work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the contract.

10.5.3 All certificates required by this Agreement shall be sent directly to City's Senior Representative. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

10.5.4 **If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the CM@Risk must:**

- **Submit a current insurance certificate (dated within 15 Days of the Payment Request submittal) with each Payment Request form. The Payment Request will be rejected if the insurance certificate is not submitted with the Payment Request.**

10.6 **Subcontractors.** CM@Risk's certificate(s) shall include all Subcontractors as additional insureds under its policies or CM@Risk shall furnish to the City separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements identified above.

10.7 **Approval.** Any modification or variation from the insurance requirements in this Contract shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.

10.8 Bonds and Other Performance Security.

10.8.1 Prior to execution of this Agreement, the CM@Risk must provide a performance bond, maintenance bond, at the City's discretion, and a payment bond, each in an amount equal to the total contract price of the GMP set forth in this Agreement. In addition to any criteria set forth

in this provision, the performance and payment bonds must comply with all requirements of Chapter 2253 of the Texas Government Code.

- 10.8.2** Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Texas, issued by the Director of the Texas Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued, updated, or certified within two years prior to the execution of this Agreement.
- 10.8.3** The bonds shall be made payable and acceptable to the City of Denton.
- 10.8.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Texas or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.
- 10.8.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CM@Risk shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- 10.8.6** All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "A- or better for the prior four quarters" by the A.M. Best Company.

Article 11 – Indemnification

11.1 CM@Risk's General Indemnification.

11.1.1 CM@RISK AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY OF DENTON, ITS OFFICERS, AGENTS AND EMPLOYEES, AND ANY JURISDICTION OR AGENCY ISSUING PERMITS FOR ANY WORK INCLUDED IN THE PROJECT, THEIR OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, (HEREINAFTER REFERRED TO AS "INDEMNITEES", FROM ALL SUITS AND CLAIMS, INCLUDING ATTORNEY'S FEES AND COST OF LITIGATION, ACTIONS, LOSS, DAMAGE, EXPENSE, COST OR CLAIMS OF ANY CHARACTER OR ANY NATURE ARISING OUT OF THE WORK DONE IN FULFILLMENT OF THE TERMS OF THE CONTRACT DOCUMENTS OR ON ACCOUNT OF ANY ACT, CLAIM OR AMOUNT ARISING OR RECOVERED UNDER WORKER'S COMPENSATION LAW OR ARISING OUT OF THE FAILURE OF THE CM@RISK, ITS OFFICERS, EMPLOYEES, AGENTS, OR ITS SUBCONTRACTORS OR THE SUBCONTRACTORS' OFFICERS, EMPLOYEES OR AGENTS, TO CONFORM TO ANY STATUTES, ORDINANCES, REGULATION, LAW OR COURT DECREE. IT IS AGREED THAT THE CM@RISK WILL BE RESPONSIBLE FOR PRIMARY LOSS INVESTIGATION, DEFENSE, AND JUDGMENT COSTS WHERE THIS INDEMNIFICATION PROVISION APPLIES. IN CONSIDERATION OF THE AWARD OF THIS CONTRACT, THE CM@RISK AGREES TO WAIVE ALL RIGHTS OF SUBROGATION AGAINST THE CITY, ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FOR LOSSES ARISING FROM THE WORK PERFORMED BY THE CM@RISK, ITS OFFICERS, EMPLOYEES, AGENTS, OR ITS SUBCONTRACTORS OR THE SUBCONTRACTORS' OFFICERS, EMPLOYEES OR AGENTS, OR ITS SUBCONTRACTORS FOR THE CITY. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EXCEPT TO THE EXTENT THAT THE DAMAGES BEING SOUGHT WERE CAUSED, IN PART, BY ANY ACT, OMISSION OR GROSS NEGLIGENCE AND WILLFUL MISCONDUCT OF THE CITY

Article 12 – General Provisions

12.1 Contract Documents

- 12.1.1** Contract Documents are as defined in Article 1. This Agreement, Plans, Standard Specifications and Details, Special Provisions, Addenda (if any) and used as the basis for the Guaranteed Maximum Price Proposal; GMP, Performance Bond, Payment Bond, Maintenance Bond, if applicable, Certificates of Insurance, Construction Documents and Change Orders (if any) are by this reference made a part of this Agreement to the same extent as if set forth herein in full. The Contract Documents include Exhibit Z and Exhibit AA and CM@Risk agrees to be bound by those terms and conditions that by reference are made a part of this Agreement to the same extent as if set forth herein in full. Exhibit Z is from the Texas Water Development Board (TWDB) document TWDB-0552 revised in November 2018. The TWDB forms and guidance documents noted in Exhibit Z may be accessed through the TWDB's Financial Assistance website at <http://www.twdb.texas.gov/financial/instructions/index.asp>.
- 12.1.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. Anything shown on the Plans but not mentioned in the Specifications or vice-versa, or anything not expressly set forth in either, but which is reasonably implied, shall be furnished as though specifically shown and mentioned in both without any extra charge.
- 12.1.3** In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.
- 12.1.3.1** On the drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small-scale drawings. No work shown on the plans, the dimensions of which are not figured, shall be executed until instructions have been obtained from the Design Professional as to the dimensions to be used.
- 12.1.3.2** Specifications generally take precedence over Plans. Should there be a conflict within the Specifications; or within the Plans; or between the Plans and Specifications; however, the Design Professional be made aware of such conflict in writing, and shall decide, after consultation with the City, which stipulation will provide the best installation and its decision shall be final; provided however, any conflict not presented in writing shall be the sole discretion of the City
- 12.1.3.3** The Plans, for purposes of clearness and legibility, are essentially diagrammatic, and although the sizes and locations of equipment are shown to scale wherever possible, the CM@Risk, Subcontractors, and Sub-subcontractors are required to familiarize themselves with all the Work required by the Contract Documents. The CM@Risk, other Contractors, Subcontractors, and Sub-subcontractors shall properly coordinate its work with that of the City and all other Contractors. It is not within the scope of the Plans to show all necessary offsets, obstructions or structural conditions. It shall be the responsibility of the CM@Risk and each Contractor to plan, coordinate, and install its work in such a manner so as to conform to the structure. Any conflict within the Plans shall be referred to the Design Professional for disposition prior to the installation of any affected work.
- 12.1.3.4** In the event of any inconsistency, conflict, or ambiguity between the Contract Documents and the Preconstruction Phase Contract, the Contract Documents take precedence over the Preconstruction Phase Contract.
- 12.1.4** The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

- 12.1.5** The Contract Documents form the entire agreement between City and CM@Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.
- 12.2** **Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.
- 12.3** **Time is of the Essence.** City and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.
- 12.4** **Mutual Obligations.** City and CM@Risk commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.
- 12.5** **Cooperation and Further Documentation.** The CM@Risk agrees to provide the City such other duly executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.
- 12.6** **Assignment.** Neither CM@Risk nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.
- 12.7** **Successorship.** CM@Risk and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.
- 12.8** **Third Party Beneficiary.** Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and the CM@Risk and not for the benefit of any other party.
- 12.9** **Governing Law.** The Agreement and all Contract Documents shall be deemed to be made under and shall be construed in accordance with and governed by the laws of the State of Texas without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought and tried in the district courts of Denton County, Texas, and for this purpose, each party hereby expressly and irrevocably consents to the sole and exclusive jurisdiction and venue of such Court with the City consenting only to the extent allowed by statute and otherwise reserving all rights and defenses.
- 12.10** **Severability.** If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 12.11** **Compliance with Federal Laws.** CM@Risk understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@Risk agrees to comply with these laws, as well as any other federal laws that may apply, in performing the Contract Documents and to permit the City to verify such compliance.
- 12.12** **Legal Requirements.** CM@Risk shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements. It is not the CM@Risk's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CM@Risk recognizes that portions of the Construction Documents are at variance therewith, the CM@Risk shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.

- 12.13 Fair Treatment of Workers.** The CM@Risk shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. They shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders, and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The CM@Risk shall protect and indemnify the City and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.
- 12.14 Independent Contractor.** The CM@Risk is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct the CM@Risk as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the CM@Risk shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.
- 12.15 Survival.** All warranties, representations, and indemnifications by the CM@Risk shall survive the completion or termination of this Agreement.
- 12.16 Covenant Against Contingent Fees.** The CM@Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Denton has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City of Denton shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 12.17 No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.
- 12.18 Notice.**
- 12.18.1** Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or mailed by certified mail, postage prepaid, return receipt requested or by e-mail; provided however, that e-mail shall not be a permissible method of delivery for any notice, request, instruction or other document that requires execution by both parties, and shall be deemed given upon (a) confirmation of receipt of an e-mail transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to CM@Risk:
Sundt Construction, Inc.
2620 S. 55th Street
Tempe, AZ 85282
slreidy@sundt.com

to City:

Materials Management
ATTN: Contract 8289; Purchasing Manager
901B Texas Street
Denton, Texas 76209
purchasing@cityofdenton.com

With a Copies to:

City Attorney
215 E. McKinney Street
Denton, Texas 76201
legal@cityofdenton.com

Project Manager
901-B Texas Street
Denton, Texas 76209
Jason.Donnell@cityofdenton.com

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

12.18.2 Notices Related to Payment, Securities-in-lieu, Bonds. Any notice, request, instruction, or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds, or other instrument securing the performance of this Agreement, including

but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to Contractor:

Sundt Construction, Inc.
125 East John W Carpenter Freeway
Irving, Tx 75062
Mabothun@sundt.com

to City:

City of Denton
ATTN: Contract 8289; Purchasing Manager
901B Texas Street
Denton, Texas 76209
purchasing@cityofdenton.com

With a Copies to:

City Attorney
215 E. McKinney Street
Denton, Texas 76201
legal@cityofdenton.com

Project Manager
901-B Texas Street
Denton, Texas 76209
Jason.Donnell@cityofdenton.com

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

12.19 Equal Opportunity/Affirmative Action

12.19.1 The CM@Risk shall comply with the provisions of this Agreement, and the requirements of state, federal, and local law and regulation, pertaining to discrimination and accepting applications or hiring employees. The CM@Risk shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, or disability nor otherwise commit an unfair employment practice. The CM@Risk will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or

services in connection with this Agreement. The CM@Risk further agrees that this clause will be incorporated in all subcontracts, job-consultant contracts of this Contract entered into by the CM@Risk.

12.19.2 The City extends to each individual, firm, vendor, supplier, contractor, and Subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of Disadvantaged and/or Minority-owned or Woman-owned business to reflect both the industry and community ethnic composition.

12.19.3 The following two paragraphs apply to the CM@Risk named herein and shall appear in all contracts between the CM@Risk and any and all Subcontractors who are employed on this Project. The CM@Risk further agrees that the two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract.

“Any Party (Subcontractor), in performing under this contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

The Party (Subcontractor) will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship.”

The CM@Risk further agrees that the above two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract.

12.20 Confidentiality of Plans & Specifications

12.20.1 Any plans or specifications you receive regarding this Project are for official use only. You may not share them with others except as required to fulfill the obligations of your Contract with the City.

12.20.2 All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the CM@Risk shall include the following language: “These plans are for official use only and may not be shared with others except as required to fulfill the obligations of your contract with the City of Denton”.

12.21 Hazardous Materials

12.21.1 The CM@Risk is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Materials or Substances.

- 12.21.2** If the CM@Risk encounters a Hazardous Material or Substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the CM@Risk, the CM@Risk shall, upon recognizing the condition, immediately stop Work in the affected area and notify the City of the condition in writing.
- 12.21.3** If the suspected Hazardous Material is found to contain asbestos, PCB or other recognized hazardous substances or materials the CM@Risk shall not resume work in the affected area until the material has been abated or rendered harmless. The CM@Risk and the City may agree, in writing, to continue work in non-affected areas onsite.
- 12.21.4** An extension of Contract Time may be granted in accordance with Article 6.
- 12.21.5** The CM@Risk will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.
- 12.21.6** The CM@Risk shall certify, in a form acceptable to City that no Hazardous Materials have been incorporated into the Work.
- 12.21.7** **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CM@RISK SHALL INDEMNIFY AND HOLD HARMLESS CITY, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY THE CM@RISK OR BY ANYONE FROM WHOM CM@RISK IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH SHALL OBLIGATE CM@RISK TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.**
- 12.22** **Traffic Control.** CM@Risk will comply with all provisions of the then current Manual on Uniform Traffic Control Devices and any other traffic control provisions as may be provided in the technical specifications.
- 12.23** **Immigration Nationality Act.** CM@Risk shall verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by City, CM@Risk shall provide City with copies of all I-9 forms and supporting eligibility documentation for each CM@Risk employee who performs work under this Agreement. CM@Risk shall adhere to all federal and state laws as well as establish appropriate procedures and controls so that no services will be performed by any CM@Risk employee who is not legally eligible to perform such services. **CM@RISK SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CM@Risk's EMPLOYEES.** City, upon written notice to CM@Risk, shall have the right to immediately terminate this Agreement for violations of this provision by CM@Risk.
- 12.24** **Prohibition on Contracts with Companies Boycotting Israel.** CM@Risk acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. By signing this agreement, CM@Risk certifies that CM@Risk's signature provides written verification to the City that CM@Risk: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

- 12.25 Prohibition on Contracts with Companies Boycotting Certain Energy Companies.** CM@Risk acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. By signing this agreement, CM@Risk certifies that CM@Risk’s signature provides written verification to the City that CM@Risk: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 12.26 Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations.** CM@Risk acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. By signing this agreement, CM@Risk certifies that CM@Risk’s signature provides written verification to the City that CM@Risk: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 12.27 Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization.** Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. By signing this agreement, CM@Risk certifies that CM@Risk’s signature provides written verification to the City that CM@Risk, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 12.28 Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies.** The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future: (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country; (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country; or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

CITY OF DENTON, TEXAS

BY: _____

Printed Name

Title

Date

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: ^{DocuSigned by:}
Marcella Lunn
4B070831B4A438...

CM@Risk

^{DocuSigned by:}
BY: Sam Reidy
FE8ACF30DF664FD...

Sam Reidy

Printed Name

President - w/WW Group

Title

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

^{Signed by:}
Stephen D. Gay Stephen D. Gay
FE848BB9726E4A9...
SIGNATURE PRINTED NAME

General Manager

TITLE

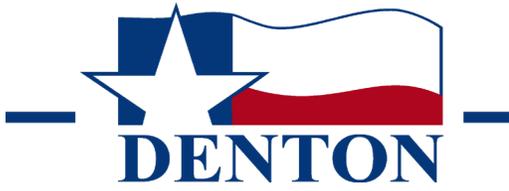
water utilities and street operations

DEPARTMENT

EXHIBIT A - PROJECT DESCRIPTION

See Scope of Work in Exhibit B - Approved GMP Proposal.

EXHIBIT B – APPROVED GMP PROPOSAL



PCWRP HEADWORKS & EXPANSION PROJECT

90% GMP 1



02.04.2026



SUNDT



October 23, 2025

City of Denton
Attn: Mr. Jason Donnell
901A Texas St.
Denton TX, 76209

**RE: Contract No. 8289, Pecan Creek WRP Headworks and Expansion
90% Guaranteed Maximum Price**

Dear Mr. Donnell,

Sundt Construction is pleased to submit the enclosed Guaranteed Maximum Price (GMP) Proposal for the City of Denton Pecan Creek WRP Headworks and Expansion Project. This GMP has been developed based upon our review and understanding of the 90% Design Documents submitted by Kimley-Horn to the City of Denton and Sundt Construction on June 11, 2025.

We are available to meet with you to address any concerns or clarifications. Should you have questions, please don't hesitate to contact Curt Klepper at (480) 932-3989.

Respectfully,



Sam Reidy
Water and Wastewater Group President
Sundt Construction, Inc.

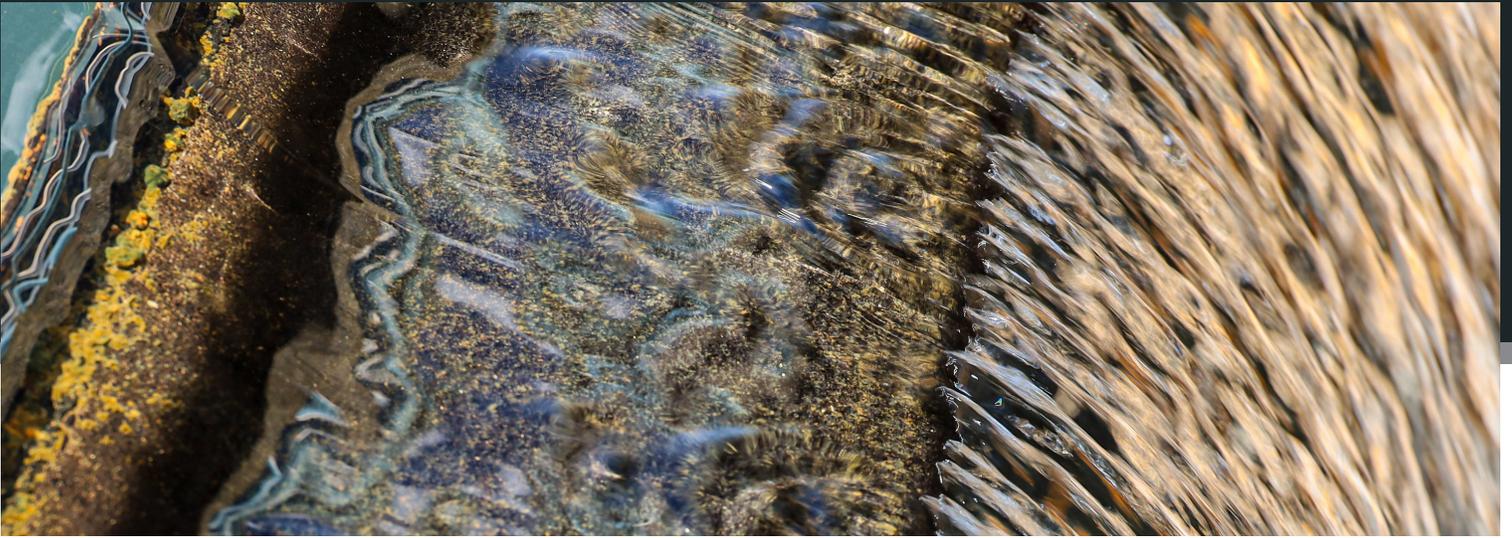
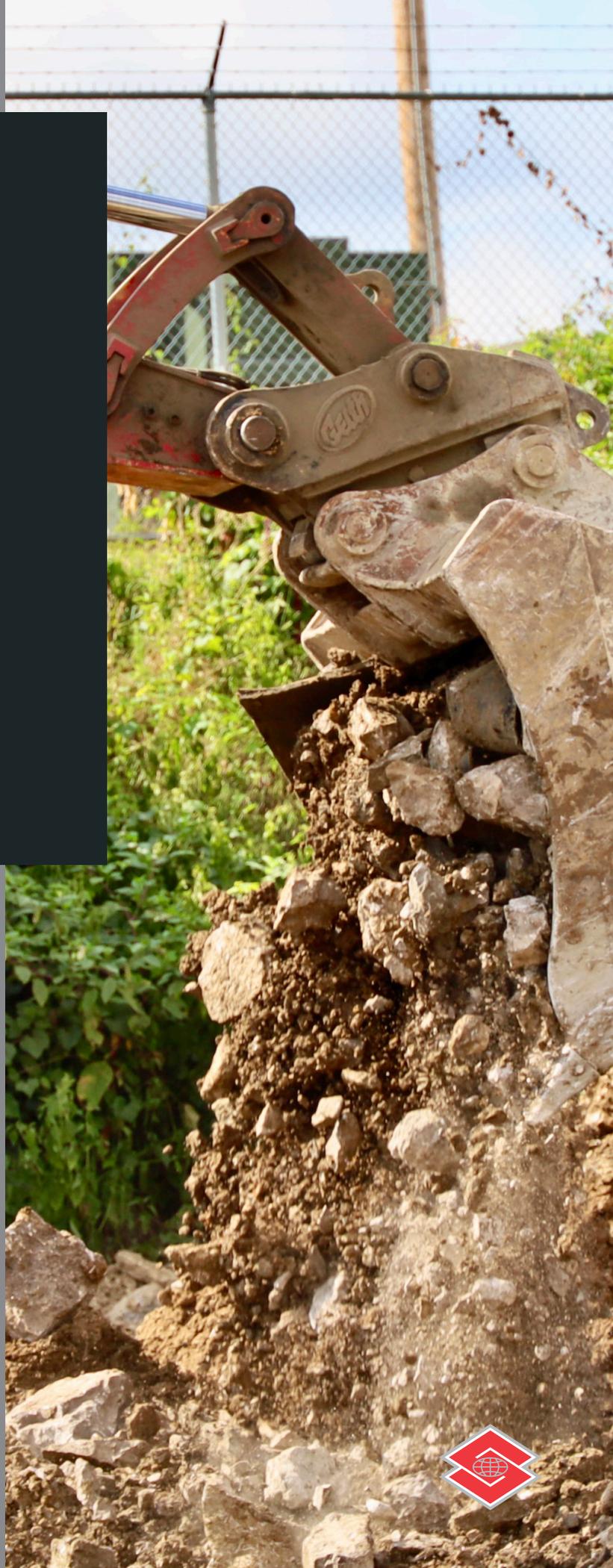


TABLE OF CONTENTS

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PLANS & SPECIFICATIONS USED FOR GMP PROPOSAL	4
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PROJECT SCHEDULE	6

1

SCOPE OF WORK



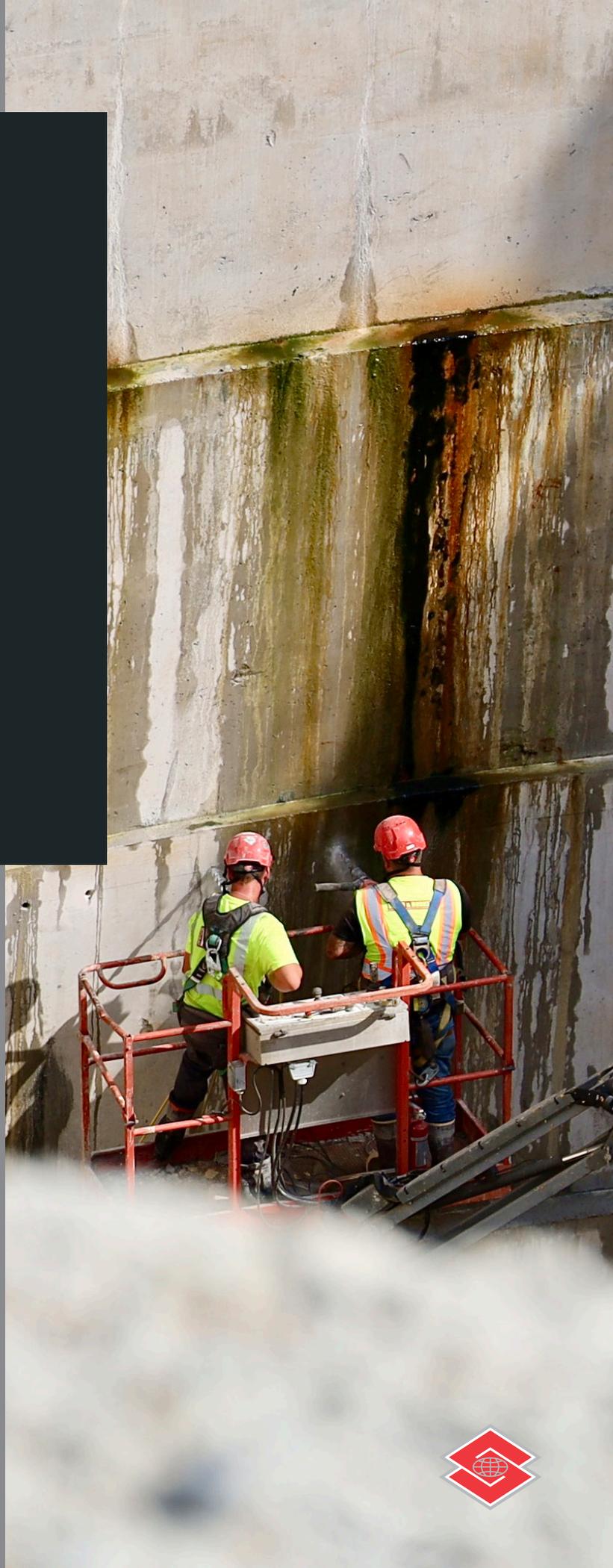


SCOPE OF WORK

GMP 1 consists of the testing and inspections, surveying, earthwork, and site utilities work packages for the Pecan Creek WRP Headworks and Expansion project as depicted in the 90% design documents provided by Kimley-Horn on June 11, 2025. Only a portion of the site utilities have been included in GMP 1, all remaining site utilities will be part of a future GMP. Excavation and backfill of structures across the project site have been included in this GMP package other than the Control/Operations building and Equipment Storage Building that will be carried in a future package. Along with the direct cost of work, the CMAR has included costs associated with the general conditions and general requirements incidental to the construction of this GMP 1, a CMAR contingency, an Owner's and design contingency, required bonds and insurance, a 7.00% construction fee, and allowances meant to capture work that cannot be quantified by the project documents. Future GMP packages will include the costs associated with the remainder of the project scope that is not carried within this GMP 1 package.

2

SUMMARY OF THE GMP



Pecan Creek WRP - 90% GMP 1 - Summary

Project #:

8289

Date: February 4, 2026

Project Name:

Pecan Creek WRP Headworks and Expansion - GMP 1

GMP Summary				AMOUNT
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)			\$ 63,025,437
B.	CM@Risk's Contingency			\$ 2,443,308
C.	Allowances			\$ 3,160,708
INDIRECT COSTS				RATE
D.	Construction Fee			7.00% \$ 5,839,532
E.	General Conditions			\$ 14,792,438
	E1	Payment and Performance Bond	\$ 648,931	
	E2	Insurance	\$ 1,066,674	
F. TOTAL GMP				\$ 89,261,424
G. Owner's Contingency				\$ 3,060,141
H. Contract Amount				\$ 92,321,565

Substantial Completion 1832 Calendar Days

Final Completion 1868 Calendar Days

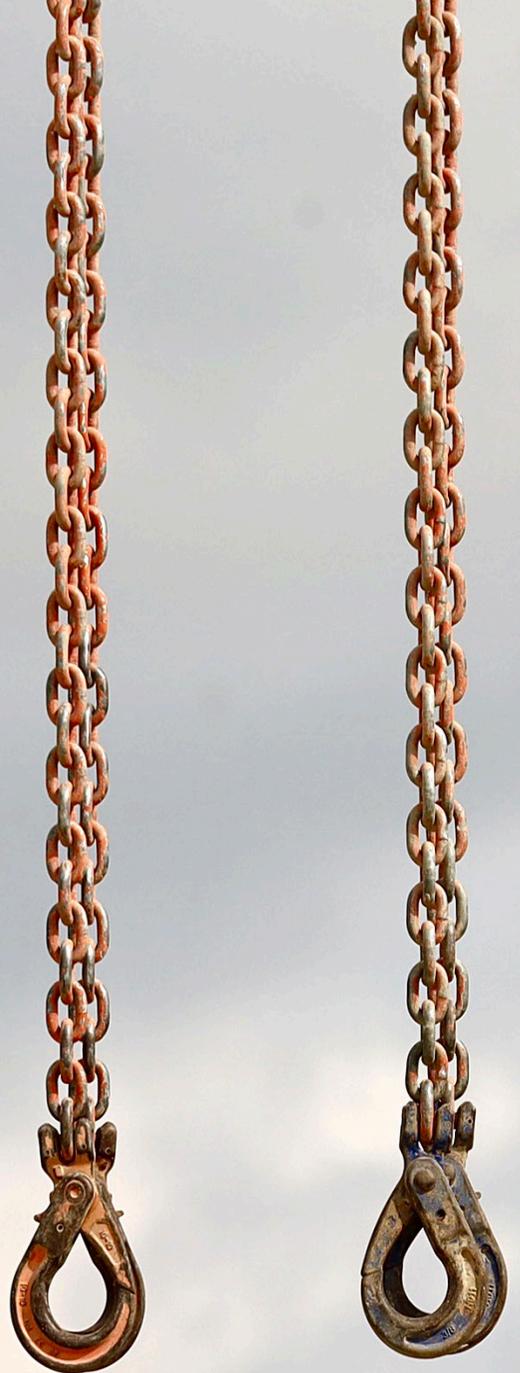
Pecan Creek WRP Expansion
90% GMP 1
February 4, 2026



		90% GMP 1
A1 Direct Costs		\$ 63,025,437
A2 Sales Tax	8.25%	\$ -
A3 CMAR Construction Contingency		\$ 2,443,308
A4. Allowances:		\$ 3,160,708
A4.1 Construction Escalation/Tariff Allowance		\$ -
A4.2 90% to 100% Reconciliation Allowance		\$ 1,854,110
A4.3 Overs Quantity Overage Allowance		\$ 760,000
A4.4 Dust Control Allowance		\$ 406,143
A4.5 Street Sweeping Allowance		\$ 140,455
B - TOTAL DIRECT COSTS		\$ 68,629,453
C. General Conditions		\$ 13,076,834
D. Payment & Performance Bond	0.727%	\$ 648,931
E1. General Liability Insurance (PLPD)	0.30%	\$ 267,784
E2. Builder's Risk Insurance		\$ 798,890
F - TOTAL INDIRECT COSTS		\$ 14,792,438
G - SUBTOTAL DIRECT AND INDIRECT COSTS		\$ 83,421,891
H. Construction Fee (Overhead and Profit)	7.00%	\$ 5,839,532
I - SUBTOTAL DIRECT AND INDIRECT COSTS INCLUDING FEE		\$ 89,261,424
J. Total Prior GMPs		\$ -
K. Total Prior Change Orders		\$ -
L. Contract Administration Services		\$ -
M. Owner's & Design Contingency		\$ 3,060,141
N. GRAND TOTAL		\$ 92,321,565

3

SCHEDULE OF VALUES



90% GMP 1 - Schedule of Values
Pecan Creek WRP Headworks and Expansion - GMP 1
February 4, 2026

Work Category	Subcontractor	Quantity	Unit	Unit Cost	Total Cost
WC 012000 - Testing and Inspections	Alliance Geotechnical Group	1	LS	\$ 771,717.30	\$ 771,717.30
WC 013000 - Survey	Hanna Engineering and Survey	1	LS	\$ 89,195.80	\$ 89,195.80
WC 310000 - Earthwork	Sundt Construction, Inc.	1	LS	\$ 38,185,991.00	\$ 38,185,991.00
WC 330000 - Site Utilities	Sundt Construction, Inc.	1	LS	\$ 23,978,533.00	\$ 23,978,533.00
Total Direct Cost of Work					\$ 63,025,437.10
Allowances*					
Overs Quantity Overrun		20,000.00	CY	\$ 38.00	\$ 760,000.00
Dust Control		60.62	WK	\$ 6,699.81	\$ 406,142.63
Street Sweeping		129.00	WK	\$ 1,088.80	\$ 140,455.20
Reconciliation (90% to 100%)		1.00	LS	\$ 1,854,110.00	\$ 1,854,110.00
Total Allowances					\$ 3,160,707.83
CMAR's Contingency*		1	LS	\$ 2,443,307.99	\$ 2,443,307.99
Construction Fee		1	LS	\$ 5,839,532.38	\$ 5,839,532.38
General Conditions		1	LS	\$ 13,076,833.67	\$ 13,076,833.67
Bond		1	LS	\$ 648,930.55	\$ 648,930.55
Insurances		1	LS	\$ 1,066,674.01	\$ 1,066,674.01
Total GMP					\$ 89,261,423.53
Owner's and Design Contingency*		1	LS	\$ 3,060,141.07	\$ 3,060,141.07
Total GMP + Owner's and Design Contingency					\$ 92,321,564.60

**Use of allowances and/or contingencies shall be mutually agreed upon between the City of Denton and the CMAR, and shall approved by the City. Any amounts in excess of the allowances and/or contingencies shall revert to the City of Denton.*

4

PLANS & SPECIFICATIONS USED FOR GMP PROPOSAL



EXHIBIT E - BIDDING/CONTRACT DOCUMENTS LIST



PROJECT:		PECAN CREEK WRP - HEADWORKS AND EXPANSION		
REVISION DATE:		GMP-1	10/23/2025	
Document Name / Sheet Number	File Name / Sheet Title	Author	Rev. No.	Plot/Rev/Wet Stamp Date
Reports				
Geotechnical Report	GEOTECHNICAL ENGINEERING STUDY WATER RECLAMATION FACILITY HEADWORKS	CMJ/KH		12/16/2022
Geotechnical Report	GEOTECHNICAL ENGINEERING STUDY 26-MGD PLANT EXPANSION	CMJ/KH		5/13/2025
Specifications				
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	00 00 00 Cover Page	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	00 00 00 Table of Contents	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	00 01 07 Seals Page	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 11 00 Summary of Work - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 11 11 Existing Site Conditions (ADDENDUM 05)	KH		07/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 25 00 Substitution Procedures - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 29 76 Stored Materials and Equipment (Materials On Hand) - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 31 20 Project Meetings - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 32 13 Schedule of Values	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 32 16 Construction Progress Schedule - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 32 33 Preconstruction Video - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 32 35 Aerial Photographic Documentation	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 33 00 Submittals - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 35 13 Special Project Procedures- REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 45 23 Testing and Inspection Services - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 50 00 Temporary Facilities and Controls - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 57 13 Storm Water Pollution Prevention Plan - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 58 13 Temporary Project Signage - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 66 00 Product Storage and Handling Requirements - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 70 00 Mobilization and Remobilization - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 71 23 Construction Staking and Survey - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 74 23 Cleaning - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 77 19 Closeout Requirements - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 78 23 Operation and Maintenance Data - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	01 78 39 Project Record Documents - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	02 41 13 Selective Site Demolition - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	02 41 14 Utility Removal/Abandonment - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	02 41 15 Paving Removal - REVISED	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	03 15 00 Concrete Accessories	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	03 20 00 Concrete Reinforcing	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	03 30 00 Cast-In-Place Concrete	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	09 90 05 Concrete Protective Coatings	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	09 91 00 Piping and Equipment Painting	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 05 01 Common Work Results for Electrical	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 05 19 Medium Voltage Cable	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 05 23 Instrumentation Cable	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 05 26 Grounding and Bonding	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 05 34 Raceways and Boxes	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 05 43 Underground Ducts & Pull Boxes	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 05 53 Electrical Identification	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 05 73 Short Circuit Coordination and Arc Flash Hazard Study	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 08 13 Acceptance Testing	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 09 13 Electrical Metering Devices	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 09 16 Control Equipment Accessories	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 12 19 Distribution Transformers	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 13 13 Medium Voltage Metal-Clad Paralleling Switchgear	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 13 26 Medium Voltage Metal-Clad Switchgear	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 21 00 Electric Service	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 22 00 Transformers	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 23 00 Low Voltage Switchgear	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 24 13 Switchboards	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 24 16 Panelboards	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 24 19 Motor Control Centers	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 27 16 Cabinet and Enclosures	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 28 00 Overcurrent Protection Devices	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 28 16 Disconnect Switches	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 29 23 Variable Frequency Drives - Low Voltage	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 29 36 Motor Controllers	KH		06/2025
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 32 13 Diesel Engine Generator & Controls	KH		06/2025

EXHIBIT E - BIDDING/CONTRACT DOCUMENTS LIST



PROJECT:	PECAN CREEK WRP - HEADWORKS AND EXPANSION				
REVISION DATE:	GMP-1	10/23/2025			
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 35 26 Low Voltage Active Harmonic Filter	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 36 23 Automatic Transfer Switch	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	26 43 13 Low Voltage Surge Protection Devices (SPD)	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	31 10 00 Site Clearing – REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	31 23 00 Earthwork (ADDENDUM 04)	KH		07/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	31 23 16 Unclassified Excavation – REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	31 23 19 Dewatering (ADDENDUM 02)	KH		07/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	31 24 00 Embankment - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	31 25 14 Erosion and Sediment Control - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	31 34 19 Geosynthetic Soil Reinforcement – REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	31 50 00 Excavation Support and Protection	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	31 63 29 Drilled Shafts	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	32 01 29 Concrete Repair - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	32 11 23 Flexible Base Courses – REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	32 11 29 Lime Treated Base Courses - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 01 10 Cleaning and Acceptance Testing of Water and Sewer Force Mains - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 01 30 Post Construction Closed Circuit Television (CCTV) Inspection - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 01 31 Sewer and Manhole Testing - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 01 32 Cleaning of Sewer Mains – REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 01 40 Liners for Sanitary Sewer Structures - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 01 50 Adjusting Manholes, Inlets, Valve Boxes, and other Structures to Grade - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 05 05 Utility Trench Excavation, Embedment, and Backfill (ADDENDUM 05)	KH		07/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 05 15 Installation of Carrier Pipe in Casing or Tunnel Liner Plate (ADDENDUM 02)	KH		07/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 05 61 Cast-in-Place Concrete Manholes – REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 05 64 Polymer Concrete Manholes	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 05 81 Frame, Cover, and Grade Rings - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 05 97 Utility Markers/Locators - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 05 98 Location of Existing Utilities – REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 14 05 Bolts, Nuts, and Gaskets - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 14 10 Ductile Iron Pipe and Fittings – REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 14 11 Polyvinyl Chloride (PVC) Pressure Pipe - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 14 14 High Density Polyethylene (HDPE) Pipe - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 14 20 Resilient Seated Gate Valve - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 14 25 Connection to Existing Water Mains – REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 14 30 Combination Air Valve Assemblies for Potable Water Systems - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 14 40 Fire Hydrants - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 31 10 Fiberglass Reinforced Pipe for Gravity Sanitary Sewers – REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 31 14 Polyvinyl Chloride (PVC) Gravity Sanitary Sewer Pipe - REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 31 23 Combination Air Valve for Sanitary Sewer Force Mains – REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 32 01 Access Hatches	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	33 32 11 Bypass Pumping of Existing Sewer Systems – REVISED	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	40 23 48 Grit/Sludge Process Piping Lining	KH		06/2025	
PROJECT MANUAL - PCWRP HEADWORKS & EXPANSION	43 25 00 Influent Sewage Submersible Pumps	KH		06/2025	
Drawings					
00-G100	COVER	KH	90% - GMP 1	06/2025	
00-G101	INDEX	KH	90% - GMP 1	06/2025	
00-G102	GENERAL NOTES	KH	90% - GMP 1	06/2025	
00-G103	CIVIL AND MECHANICAL LEGEND AND ABBREVIATIONS	KH	90% - GMP 1	06/2025	
00-G104	PROJECT VICINITY AND LOCATION MAP	KH	90% - GMP 1	06/2025	
00-G105	PROCESS FLOW DIAGRAM KEY PLAN	KH	90% - GMP 1	06/2025	
00-G106	PROCESS FLOW DIAGRAM - HEADWORKS	KH	90% - GMP 1	06/2025	
00-G107	PROCESS FLOW DIAGRAM - BNR & MBR	KH	90% - GMP 1	06/2025	
00-G108	PROCESS FLOW DIAGRAM - UV DISINFECTION	KH	90% - GMP 1	06/2025	
00-G109	PROCESS FLOW DIAGRAM - BLOWER BUILDING	KH	90% - GMP 1	06/2025	
00-G110	PROCESS FLOW DIAGRAM - HEAT EXCHANGER & ANAEROBIC DIGESTION	KH	90% - GMP 1	06/2025	
00-G111	PROCESS FLOW DIAGRAM - THICKENING & DEWATERING	KH	90% - GMP 1	06/2025	
00-G112	HYDRAULIC PROFILE I (ADDENDUM 04)	KH	90% - GMP 1	07/2025	
00-G113	HYDRAULIC PROFILE II	KH	90% - GMP 1	06/2025	
05-C100	SITE PLAN (ADDENDUM 01)	KH	90% - GMP 1	07/2025	
05-C101	OVERS REMOVAL PLAN	KH	90% - GMP 1	06/2025	
05-C102	SITE GRADING PLAN (ADDENDUM 02)	KH	90% - GMP 1	07/2025	
05-C103	ACCESS ROAD AND POND GRADING PLAN	KH	90% - GMP 1	06/2025	
05-C104	DIMENSIONAL CONTROL PLAN I (ADDENDUM 05)	KH	90% - GMP 1	07/2025	
05-C105	DIMENSIONAL CONTROL PLAN II (ADDENDUM 05)	KH	90% - GMP 1	07/2025	
10-C100	OVERALL YARD PIPING PLAN I	KH	90% - GMP 1	06/2025	
10-C101	OVERALL YARD PIPING PLAN II	KH	90% - GMP 1	06/2025	

EXHIBIT E - BIDDING/CONTRACT DOCUMENTS LIST



PROJECT:	PECAN CREEK WRP - HEADWORKS AND EXPANSION			SUNDT
REVISION DATE:	GMP-1	10/23/2025		
10-C102	YARD PIPING - AREA 1	KH	90% - GMP 1	06/2025
10-C103	YARD PIPING - AREA 2	KH	90% - GMP 1	06/2025
10-C104	YARD PIPING - AREA 3	KH	90% - GMP 1	06/2025
10-C105	YARD PIPING - AREA 4	KH	90% - GMP 1	06/2025
10-C106	YARD PIPING - AREA 5	KH	90% - GMP 1	06/2025
10-C107	YARD PIPING - AREA 6	KH	90% - GMP 1	06/2025
10-C108	YARD PIPING - AREA 7 (ADDENDUM 01)	KH	90% - GMP 1	07/2025
10-C109	YARD PIPING - AREA 8	KH	90% - GMP 1	06/2025
10-C110	YARD PIPING - AREA 9	KH	90% - GMP 1	06/2025
10-C111	YARD PIPING - AREA 10	KH	90% - GMP 1	06/2025
10-C112	YARD PIPING - AREA 11 (ADDENDUM 01)	KH	90% - GMP 1	07/2025
10-C113	60-INCH AND 72-INCH PECAN INTERCEPTOR STA. (0+00 TO 7+00)	KH	90% - GMP 1	06/2025
10-C114	60-INCH AND 72-INCH PECAN INTERCEPTOR STA. (7+00 TO 15+00)	KH	90% - GMP 1	06/2025
10-C115	60-INCH AND 72-INCH PECAN INTERCEPTOR STA. (15+00 TO END)	KH	90% - GMP 1	06/2025
10-C116	42-INCH STATE SCHOOL INTERCEPTOR STA. (0+00 TO 6+00)	KH	90% - GMP 1	06/2025
10-C117	42-INCH STATE SCHOOL INTERCEPTOR STA. (6+00 TO 11+00)	KH	90% - GMP 1	06/2025
10-C118	42-INCH STATE SCHOOL INTERCEPTOR STA. (11+00 TO 20+00)	KH	90% - GMP 1	06/2025
10-C119	42-INCH STATE SCHOOL INTERCEPTOR STA. (20+00 TO END)	KH	90% - GMP 1	06/2025
10-C120	12-INCH AND 20-INCH DRAIN LINE FROM EQ AND PEAK STORAGE BASIN	KH	90% - GMP 1	06/2025
10-C121	10-INCH SANITARY SEWER (0+00 TO 5+00)	KH	90% - GMP 1	06/2025
10-C122	10-INCH SANITARY SEWER (5+00 TO END)	KH	90% - GMP 1	06/2025
10-C123	PLANT DRAIN LINE STA. (0+00 TO 6+00)	KH	90% - GMP 1	06/2025
10-C124	PLANT DRAIN LINE STA. (6+00 TO END)	KH	90% - GMP 1	06/2025
10-C125	12-INCH SOUTH DRAIN LINE STA. (0+00 TO END)	KH	90% - GMP 1	06/2025
10-C126	36-INCH FORCE MAIN TO EQ BASIN STA. (0+00 TO END)	KH	90% - GMP 1	06/2025
10-C127	12-INCH AND 18-INCH UNDERDRAIN LINE FROM EQ AND PEAK STORAGE BASIN	KH	90% - GMP 1	06/2025
90-C100	CIVIL DETAILS I	KH	90% - GMP 1	06/2025
90-C101	CIVIL DETAILS II	KH	90% - GMP 1	06/2025
90-C102	CIVIL DETAILS III	KH	90% - GMP 1	06/2025
90-C103	CIVIL DETAILS IV	KH	90% - GMP 1	06/2025
90-C104	CIVIL DETAILS V	KH	90% - GMP 1	06/2025
90-C105	CIVIL DETAILS VI	KH	90% - GMP 1	06/2025
90-C106	CIVIL DETAILS VII	KH	90% - GMP 1	06/2025
90-C107	CIVIL DETAILS VIII	KH	90% - GMP 1	06/2025
90-C108	CIVIL DETAILS IX	KH	90% - GMP 1	06/2025
90-C109	JUNCTION STRUCTURE A DETAIL (ADDENDUM 04)	KH	90% - GMP 1	07/2025
90-C110	EQ BASIN VALVE VAULT DETAIL	KH	90% - GMP 1	06/2025
90-C111	PEAK STORAGE BASIN VALVE VAULT DETAIL	KH	90% - GMP 1	06/2025
20-M101	HEADWORKS UNDERSLAB PLAN	KH	90% - GMP 1	06/2025
30-M101	BNR MBR UNDERSLAB PLAN	KH	90% - GMP 1	06/2025
35-M101	THICKENING DEWATERING BUILDING UNDERSLAB PLAN (ADDENDUM 01)	KH	90% - GMP 1	07/2025
55-M101	UV AND PARSHALL FLUME UNDERSLAB PLAN	KH	90% - GMP 1	06/2025
60-M101	ANAEROBIC DIGESTERS UDERSLAB PLAN	KH	90% - GMP 1	06/2025
00-GS101	STRUCTURAL NOTES I	KH	90% - GMP 1	06/2025
00-GS102	STRUCTURAL NOTES II (ADDENDUM 01)	KH	90% - GMP 1	07/2025
00-GS104	STRUCTURAL SPECIAL INSPECTIONS I	KH	90% - GMP 1	06/2025
00-GS105	STRUCTURAL SPECIAL INSPECTIONS II	KH	90% - GMP 1	06/2025
00-GS106	STRUCTURAL SPECIAL INSPECTIONS III	KH	90% - GMP 1	06/2025
00-GS107	PROJECT SYMBOLS & ABBREVIATIONS	KH	90% - GMP 1	06/2025
00-GS108	TYPICAL STRUCTURAL DETAILS I	KH	90% - GMP 1	06/2025
00-GS109	TYPICAL STRUCTURAL DETAILS II	KH	90% - GMP 1	06/2025
00-GS110	TYPICAL STRUCTURAL DETAILS III	KH	90% - GMP 1	06/2025
00-GS111	TYPICAL STRUCTURAL DETAILS IV	KH	90% - GMP 1	06/2025
00-GS112	TYPICAL STRUCTURAL DETAILS V	KH	90% - GMP 1	06/2025
00-GS113	TYPICAL STRUCTURAL DETAILS VI	KH	90% - GMP 1	06/2025
00-GS114	TYPICAL STRUCTURAL DETAILS VII	KH	90% - GMP 1	06/2025
00-GS115	TYPICAL STRUCTURAL DETAILS VIII	KH	90% - GMP 1	06/2025
00-GX101	EXCAVATION GENERAL NOTES (ADDENDUM 05)	KH	90% - GMP 1	07/2025
00-GX102	GEOTECHNICAL BORING LOGS	KH	90% - GMP 1	06/2025
00-GX103	EXCAVATION SPECIAL INSPECTIONS I	KH	90% - GMP 1	06/2025
00-GX104	EXCAVATION PROJECT SYMBOLS & ABBREVIATIONS	KH	90% - GMP 1	06/2025
00-GX105	EXCAVATION TYPICAL STRUCTURAL DETAILS I (ADDENDUM 04)	KH	90% - GMP 1	07/2025
00-GX200	OVERALL SUGGESTED EXCAVATION PLAN I	KH	90% - GMP 1	06/2025
00-GX201	OVERALL SUGGESTED EXCAVATION PLAN II	KH	90% - GMP 1	06/2025
00-GX202	ENLARGED SUGGESTED EXCAVATION PLAN I	KH	90% - GMP 1	06/2025
00-GX203	ENLARGED SUGGESTED EXCAVATION PLAN II	KH	90% - GMP 1	06/2025

EXHIBIT E - BIDDING/CONTRACT DOCUMENTS LIST



PROJECT:	PECAN CREEK WRP - HEADWORKS AND EXPANSION			SUNDT
REVISION DATE:	GMP-1	10/23/2025		
00-GX204	ENLARGED SUGGESTED EXCAVATION PLAN III	KH	90% - GMP 1	06/2025
00-GX205	ENLARGED SUGGESTED EXCAVATION PLAN IV	KH	90% - GMP 1	06/2025
00-GX301	SUGGESTED EXCAVATION SECTIONS I	KH	90% - GMP 1	06/2025
00-GX302	SUGGESTED EXCAVATION SECTIONS II	KH	90% - GMP 1	06/2025
00-GX303	SUGGESTED EXCAVATION SECTIONS III (ADDENDUM 04)	KH	90% - GMP 1	07/2025
00-GX304	SUGGESTED EXCAVATION SECTIONS IV	KH	90% - GMP 1	06/2025
90-S101	JUNCTION STRUCTURE FOUNDATION AND ROOF PLAN (ADDENDUM 02)	KH	90% - GMP 1	07/2025
90-S102	JUNCTION STRUCTURE OVERALL SECTIONS (ADDENDUM 02)	KH	90% - GMP 1	07/2025
90-S103	EQ BASIN VALVE VAULT FOUNDATION & UPPER PLAN	KH	90% - GMP 1	06/2025
90-S104	EQ BASIN VALVE VAULT OVERALL SECTIONS	KH	90% - GMP 1	06/2025
90-S105	PEAK STORAGE BASIN VALVE VAULT FOUNDATION & UPPER PLAN	KH	90% - GMP 1	06/2025
90-S106	PEAK STORAGE BASIN VALVE VAULT OVERALL SECTIONS	KH	90% - GMP 1	06/2025
00-E100	LEGENDS	KH	90% - GMP 1	06/2025
05-E100	OVERALL SITE PLAN	KH	90% - GMP 1	06/2025
05-E300	OVERALL ONE-LINE DIAGRAM SHEET 1	KH	90% - GMP 1	06/2025
05-E301	OVERALL ONE-LINE DIAGRAM SHEET 2	KH	90% - GMP 1	06/2025
05-E302	OVERALL PLANT LOAD SUMMARY	KH	90% - GMP 1	06/2025
05-E500	GENERAL DETAILS SHEET 1	KH	90% - GMP 1	06/2025
05-E501	GENERAL DETAILS SHEET 2	KH	90% - GMP 1	06/2025
05-E600	CONDUIT SCHEDULE SHEET 1	KH	90% - GMP 1	06/2025
05-E601	CONDUIT SCHEDULE SHEET 2	KH	90% - GMP 1	06/2025
05-E602	CONDUIT SCHEDULE SHEET 3	KH	90% - GMP 1	06/2025
05-E603	CONDUIT SCHEDULE SHEET 4	KH	90% - GMP 1	06/2025
05-E604	CONDUIT SCHEDULE SHEET 5	KH	90% - GMP 1	06/2025
05-E605	PANELBOARD SCHEDULES SHEET 1	KH	90% - GMP 1	06/2025
05-E606	PANELBOARD SCHEDULES SHEET 2	KH	90% - GMP 1	06/2025
05-E607	PANELBOARD SCHEDULES SHEET 3	KH	90% - GMP 1	06/2025
05-E608	PANELBOARD SCHEDULES SHEET 4	KH	90% - GMP 1	06/2025
05-E609	LIGHT FIXTURE SCHEDULE	KH	90% - GMP 1	06/2025
20-E100	HEADWORKS LAYOUT	KH	90% - GMP 1	06/2025
20-E200	HEADWORKS COARSE SCREENING PLAN - POWER	KH	90% - GMP 1	06/2025
20-E202	HEADWORKS LIFT STATION PLAN - POWER	KH	90% - GMP 1	06/2025
20-E204	HEADWORKS GRIT AND FINE SCREEN GROUND LEVEL - POWER	KH	90% - GMP 1	06/2025
20-E205	HEADWORKS GRIT AND FINE SCREEN UPPER LEVEL - POWER	KH	90% - GMP 1	06/2025
20-E207	HEADWORKS ELECTRICAL BUILDING PLAN - POWER	KH	90% - GMP 1	06/2025
20-E300	ONE-LINE DIAGRAM HEADWORKS - SHEET 1	KH	90% - GMP 1	06/2025
20-E301	ONE-LINE DIAGRAM HEADWORKS - SHEET 2	KH	90% - GMP 1	06/2025
20-E400	EQUIPMENT ELEVATIONS HEADWORKS - SHEET 1	KH	90% - GMP 1	06/2025
20-E401	EQUIPMENT ELEVATIONS HEADWORKS - SHEET 2	KH	90% - GMP 1	06/2025
20-E402	EQUIPMENT ELEVATIONS HEADWORKS - SHEET 3	KH	90% - GMP 1	06/2025
30-E100	MBR-BNR LAYOUT - POWER	KH	90% - GMP 1	06/2025
30-E200	WAS PUMP BUILDING PLAN - POWER	KH	90% - GMP 1	06/2025
30-E300	ONE-LINE DIAGRAM BNR-MBR - SHEET 1	KH	90% - GMP 1	06/2025
30-E301	ONE-LINE DIAGRAM BNR-MBR - SHEET 2	KH	90% - GMP 1	06/2025
30-E302	ONE-LINE DIAGRAM BNR-MBR - SHEET 3	KH	90% - GMP 1	06/2025
30-E303	ONE-LINE DIAGRAM BNR-MBR - SHEET 4	KH	90% - GMP 1	06/2025
30-E304	ONE-LINE DIAGRAM BNR-MBR - SHEET 5	KH	90% - GMP 1	06/2025
30-E400	EQUIPMENT ELEVATIONS BNR-MBR - SHEET 1	KH	90% - GMP 1	06/2025
30-E401	EQUIPMENT ELEVATIONS BNR-MBR - SHEET 2	KH	90% - GMP 1	06/2025
30-E402	EQUIPMENT ELEVATIONS BNR-MBR - SHEET 3	KH	90% - GMP 1	06/2025
35-E200	THICKENING-DEWATERING BUILDING LAYOUT - POWER	KH	90% - GMP 1	06/2025
35-E203	THICKENING-DEWATERING BUILDING LAYOUT - GROUNDING	KH	90% - GMP 1	06/2025
35-E300	ONE-LINE DIAGRAM THICKENING-DEWATERING - SHEET 1	KH	90% - GMP 1	06/2025
35-E301	ONE-LINE DIAGRAM THICKENING-DEWATERING - SHEET 2	KH	90% - GMP 1	06/2025
35-E302	ONE-LINE DIAGRAM THICKENING-DEWATERING - SHEET 3	KH	90% - GMP 1	06/2025
35-E400	EQUIPMENT ELEVATION DEWATERING - SHEET 1	KH	90% - GMP 1	06/2025
35-E401	EQUIPMENT ELEVATION DEWATERING - SHEET 2	KH	90% - GMP 1	06/2025
35-E402	EQUIPMENT ELEVATION PANELBOARD & TRANSFORMER	KH	90% - GMP 1	06/2025
40-E100	ANAEROBIC DIGESTERS & HEAT EXCHANGER AREA LAYOUT	KH	90% - GMP 1	06/2025
40-E200	HEAT EXCHANGER BUILDING LAYOUT - POWER	KH	90% - GMP 1	06/2025
40-E300	ONE-LINE DIAGRAM HEAT EXCHANGER	KH	90% - GMP 1	06/2025
40-E301	ONE-LINE DIAGRAM HEAT EXCHANGER	KH	90% - GMP 1	06/2025
40-E400	EQUIPMENT ELEVATIONS HEAT EXCHANGER	KH	90% - GMP 1	06/2025
45-E100	BLOWER AREA LAYOUT	KH	90% - GMP 1	06/2025
45-E200	BLOWER ELECTRICAL BUILDING LAYOUT - POWER	KH	90% - GMP 1	06/2025
45-E201	BLOWER BUILDING LAYOUT - POWER	KH	90% - GMP 1	06/2025

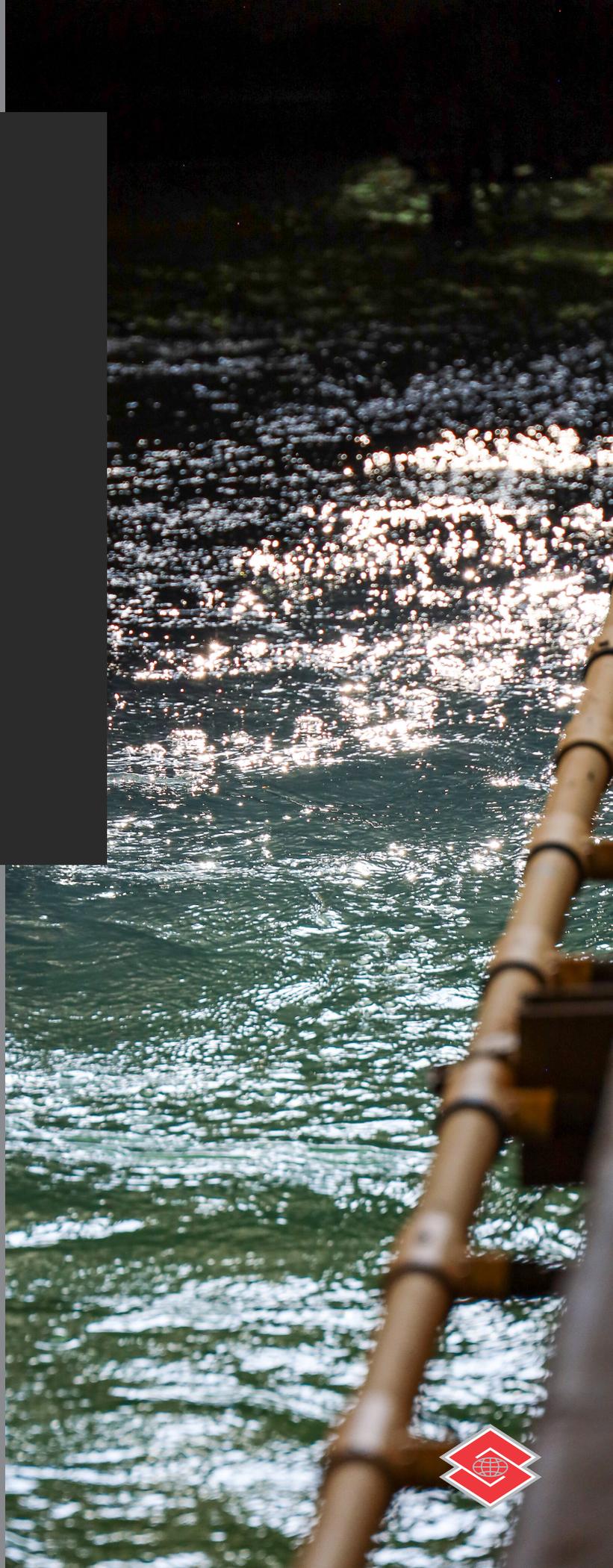
EXHIBIT E - BIDDING/CONTRACT DOCUMENTS LIST



PROJECT:	PECAN CREEK WRP - HEADWORKS AND EXPANSION			
REVISION DATE:	GMP-1	10/23/2025		
45-E300	ONE-LINE DIAGRAM BLOWER - SHEET 1	KH	90% - GMP 1	06/2025
45-E301	ONE-LINE DIAGRAM BLOWER - SHEET 2	KH	90% - GMP 1	06/2025
45-E400	EQUIPMENT ELEVATIONS BLOWER - SHEET 1	KH	90% - GMP 1	06/2025
45-E401	EQUIPMENT ELEVATIONS BLOWER - SHEET 2	KH	90% - GMP 1	06/2025
50-E200	CONTROL OPERATIONS BUILDING FIRST FLOOR - POWER SHEET 1	KH	90% - GMP 1	06/2025
50-E201	CONTROL OPERATIONS BUILDING FIRST FLOOR - POWER SHEET 2	KH	90% - GMP 1	06/2025
50-E300	ONE-LINE DIAGRAM CONTROL OPERATIONS - SHEET 1	KH	90% - GMP 1	06/2025
50-E400	EQUIPMENT ELEVATIONS CONTROL OPERATIONS	KH	90% - GMP 1	06/2025
55-E100	UV DISINFECTION SYSTEM LAYOUT - POWER	KH	90% - GMP 1	06/2025
55-E200	UV DISINFECTION BUILDING LAYOUT - POWER	KH	90% - GMP 1	06/2025
55-E300	ONE-LINE DIAGRAM UV DISINFECTION - SHEET 1	KH	90% - GMP 1	06/2025
55-E400	EQUIPMENT ELEVATIONS UV DISINFECTION - SHEET 1	KH	90% - GMP 1	06/2025
55-E401	EQUIPMENT ELEVATIONS UV DISINFECTION - SHEET 2	KH	90% - GMP 1	06/2025
60-E100	MAIN POWER DISTRIBUTION LAYOUT	KH	90% - GMP 1	06/2025
60-E200	MAIN SWITCHGEAR BUILDING - POWER	KH	90% - GMP 1	06/2025
60-E300	ONE-LINE DIAGRAM MAIN POWER DISTRIBUTION SWITCHGEAR	KH	90% - GMP 1	06/2025
60-E400	EQUIPMENT ELEV. MAIN POWER DISTRIBUTION SWITCHGEAR - SHEET 1	KH	90% - GMP 1	06/2025
60-E401	EQUIPMENT ELEV. MAIN POWER DISTRIBUTION SWITCHGEAR - SHEET 2	KH	90% - GMP 1	06/2025
60-E402	EQUIPMENT ELEV. MAIN POWER DISTRIBUTION SWITCHGEAR - SHEET 3	KH	90% - GMP 1	06/2025
60-E501	DETAILS MAIN POWER DISTRIBUTION SWITCHGEAR - SHEET 2	KH	90% - GMP 1	06/2025

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CLARIFICATIONS & ASSUMPTIONS



**90% GMP 1 - Clarifications and Assumptions
Pecan Creek WRP Headworks and Expansion
February 4, 2026**

ITEM #	WORK PACKAGE	CLARIFICATIONS AND ASSUMPTIONS
1	000000 - GENERAL CLARIFICATION/ASSUMPTION	This GMP pricing includes Buy American, Build American (BABA) requirements and American Iron and Steel (AIS) requirements.
2	000000 - GENERAL CLARIFICATION/ASSUMPTION	The GMP is based on material, equipment, and labor costs available at the time of preparation. Potential changes in tariffs on materials and goods that may be imposed through January (or until such tariffs are enacted) could significantly impact costs and delivery timelines. Therefore, this estimate does not account for any additional expenses or delays that may result from these tariffs. Should new tariffs be implemented, the City of Denton and Sundt will mutually agree on impacts or changes to actual project costs or schedule.
3	000000 - GENERAL CLARIFICATION/ASSUMPTION	Sundt pricing is based on a 50-hour work week, Monday through Friday.
4	000000 - GENERAL CLARIFICATION/ASSUMPTION	Sundt assumes that this project will be tax exempt. No taxes have been included in this GMP.
5	000000 - GENERAL CLARIFICATION/ASSUMPTION	The 1832 days until substantial completion includes the full project scope (GMP's 1, 2, and 3). GMP 1 only includes general conditions cost through December 2027 - the first 22 months of the work. Future GMP packages will each include additional general conditions cost to cover the remaining project duration.
6	000000 - GENERAL CLARIFICATION/ASSUMPTION	Sundt pricing assumes potable and non-potable water will be paid for by City. Assume available flowrates are sufficient to fill basins for leak testing in 10 days or less (~100 gpm+).
7	000000 - GENERAL CLARIFICATION/ASSUMPTION	Sundt pricing includes anticipated costs for electrical consumption.
8	000000 - GENERAL CLARIFICATION/ASSUMPTION	Sundt pricing assumes that potable or non-potable water can be used to hydrotest all concrete structures in this package.
9	000000 - GENERAL CLARIFICATION/ASSUMPTION	The value of insurance and bonding is based on the total value of the cost model less the design contingency.
10	000000 - GENERAL CLARIFICATION/ASSUMPTION	The GMP 1 price is based on selecting Alliance Geotechnical Group for work package 012000, Hanna Surveying and Engineering for work package 013000, and Sundt Construction for work packages 310000, and 330000.
11	000000 - GENERAL CLARIFICATION/ASSUMPTION	A reconciliation allowance has been included to cover potential scope changes from the 90% set to 100% issued for construction set of documents.
12	000000 - GENERAL CLARIFICATION/ASSUMPTION	This GMP excludes the responsibility or liability for the identification, testing, removal, remediation, disposal, transportation, or management of contaminated or hazardous soils ("Contaminated Soils") encountered on or adjacent to the project site. "Contaminated Soils" includes any soils impacted by hazardous substances, petroleum products, heavy metals, or any other materials regulated under applicable federal, state, or local environmental laws (including but not limited to CERCLA, RCRA, and state-specific hazardous waste regulations).
13	000000 - GENERAL CLARIFICATION/ASSUMPTION	This GMP excludes the responsibility for the identification, testing, treatment, removal, containment, discharge, filtering or disposal of contaminated water or groundwater ("Contaminated Water") encountered on the project site. "Contaminated Water" includes, but is not limited to, water containing hydrocarbons, heavy metals, hazardous chemicals, sewage, or any substances regulated under federal, state, or local environmental laws.
14	000000 - GENERAL CLARIFICATION/ASSUMPTION	This GMP excludes the responsibility for the identification, investigation, evaluation, protection, mitigation, or treatment of archaeological, paleontological, cultural, or historic resources ("Cultural Resources") that may be encountered during the course of construction. These obligations, including compliance with any federal, state, tribal, or local requirements related to such resources (e.g., NHPA, NAGPRA), shall rest solely with the Owner.
15	000000 - GENERAL CLARIFICATION/ASSUMPTION	This GMP excludes the responsibility for the identification, monitoring, protection, relocation, mitigation, or management of any biological resources ("Biological Resources"), including but not limited to threatened or endangered species, sensitive habitats, wetlands, migratory birds, or other protected flora and fauna is excluded. All such responsibilities, including compliance with federal, state, or local environmental regulations (e.g., Endangered Species Act, Migratory Bird Treaty Act, Clean Water Act, state-specific laws), shall rest solely with the Owner.
16	310000 - EARTHWORK	The GMP 1 pricing assumes that the northern BNR wall will be backfilled no later than 12/17/2026.
17	310000 - EARTHWORK	An allowance has been included for an additional 20,000 CY of overs to be hauled offsite. The unit pricing for this allowance was taken from the bid form from Sundt Transportation.

18	310000 - EARTHWORK	An allowance has been included for approximately 14 months of dust control with a CMAR operated water truck to span the gap between the GMP 1 work and the anticipated start of the GMP 3 scope of work. The GMP 3 contractor will be responsible to carry the dust control/water truck for the remainder of the project duration.
19	310000 - EARTHWORK	A street sweeping allowance has been included for 30 months of rental time for a Broce broom to be onsite for the CMAR to handle any immediate or supplemental track out/sweeping needs onsite.
20	310000 - EARTHWORK	All work associated with the Control/Operations Building and Warehouse has been excluded from this GMP. Future GMP packages will include the work associated with these structures.
21	310000 - EARTHWORK	GMP 1 excludes the landscaping wall northeast of the Junction Structure, and instead includes sloping back material at a safe slope behind proposed wall. The landscaping wall will be captured in a future GMP.
22	330000 - SITE UTILITIES	GMP 1 does not include concrete coatings in the Junction Structure or either of the valve vaults. Concrete coatings at the Junction Structure will be included in a future GMP.
23	330000 - SITE UTILITIES	Removal of trees required to complete the installation of the sewer interceptors has been included in this GMP 1 pricing. No tree replacement has been included in this GMP.

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PROJECT SCHEDULE



#	Activity ID	Activity Name	OD	Start	Finish	2026												2027												2028												2029												2030												2031																					
						S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J
1	162482 - Pecan Creek WRP - 30 MGD - Current		1749	27-Mar-24 A	27-Feb-31																																																																																		
2	CONTRACT MILESTONES		26	22-Jan-31	27-Feb-31																																																																																		
3	MST.099	Substantial Completion	0		22-Jan-31																																																																																		
4	MST.99	Final Completion	0		27-Feb-31																																																																																		
5	PROJECT MILESTONES		1749	27-Mar-24 A	27-Feb-31																																																																																		
6	MST.001	Preconstruction Kick Off	0	27-Mar-24 A																																																																																			
7	PRJCT.DUR	Overall Duration (5 days Calendar w/ Sundt Holiday)	1282	03-Feb-26	27-Feb-31																																																																																		
8	MST.010	Construction Mobilization	0		09-Feb-26																																																																																		
9	MST.030	Headworks - Construction Completion	893	15-Apr-26	23-Oct-29																																																																																		
10	DESIGN		572	27-Mar-24 A	30-Jun-26																																																																																		
11	DESIGN DELIVERABLES		164	01-Nov-24 A	12-Jun-25 A																																																																																		
12	DES.PCWRP.10	Develop Updated Project Documents (~30%)	46	01-Nov-24 A	14-Mar-25 A																																																																																		
13	DES.PCWRP.20	Develop 60% Project Documents	164	01-Nov-24 A	12-Jun-25 A																																																																																		
14	GMP-1		370	27-Mar-24 A	12-Dec-25																																																																																		
15	DSN.BAL1070	GMP-1 - Design Completion -Pkg 1 Civil and Early LL Procurement 60% Design (Old	372	27-Mar-24 A	30-Oct-24 A																																																																																		
16	DES.PCWRP.30	Develop GMP 1 90% Documents	100	01-Nov-24 A	11-Jun-25 A																																																																																		
17	DES.PCWRP.70	Develop GMP 1 100% IFC Documents	60	12-Jun-25 A	12-Dec-25																																																																																		
18	GMP-2		508	27-Mar-24 A	31-Mar-26																																																																																		
19	DSN.A1000	GMP-2 - Headworks, Peak Storage Pond & BOP LLE Package 1_15%BODR (Old A	35	27-Mar-24 A	03-May-24 A																																																																																		
20	DSN.A1010	GMP-2 - Headworks, Peak Storage Pond & BOP LLE Package 1_30%Design (Old A	75	06-May-24 A	06-Aug-24 A																																																																																		
21	DSN.A1020	GMP-2 - Headworks, Peak Storage Pond & BOP LLE Package 1_60%Design (Old A	79	07-Aug-24 A	30-Oct-24 A																																																																																		
22	DES.PCWRP.40	Develop GMP 2 90% Documents	103	30-Jun-25 A	14-Jan-26																																																																																		
23	DES.PCWRP.80	Develop GMP 2 100% IFC Documents	54	15-Jan-26	31-Mar-26																																																																																		
24	GMP-3		254	30-Jun-25 A	30-Jun-26																																																																																		
25	DES.PCWRP.50	Develop GMP 3 90% Documents	116	30-Jun-25 A	27-Feb-26																																																																																		
26	DES.PCWRP.90	Develop GMP 3 100% IFC Documents	86	02-Mar-26	30-Jun-26																																																																																		
27	PRECONSTRUCTION		430	14-Jan-25 A	22-Sep-26																																																																																		
28	ESTIMATE		323	12-Jun-25 A	22-Sep-26																																																																																		
29	GMP 1 - 90% GMP DEVELOPMENT		149	12-Jun-25 A	16-Jan-26																																																																																		
30	GMP1.PRECON.10	GMP 1 - Develop 90% GMP 1 Development	0		12-Jun-25 A																																																																																		
31	GMP1.PRECON.70	GMP 1 - Develop Bidding Documents	2	13-Jun-25 A	13-Jun-25 A																																																																																		
32	GMP1.PRECON.130	GMP 1 - CoD Review Bidding Documents	9	16-Jun-25 A	26-Jun-25 A																																																																																		
33	GMP1.PRECON.220	GMP 1 - Advertise Bid Documents/Bidding Phase	26	16-Jun-25 A	22-Jul-25 A																																																																																		
34	GMP1.PRECON.90	GMP 1 - Prebid Meeting	1	26-Jun-25 A	26-Jun-25 A																																																																																		
35	GMP1.PRECON.110	GMP 1 - 90% GMP 1 Bids Due/Bid Opening	1	23-Jul-25 A	23-Jul-25 A																																																																																		
36	GMP1.PRECON.210	GMP 1 - Abstract Bids/ Estimate Complete	8	23-Jul-25 A	01-Aug-25 A																																																																																		
37	GMP1.PRECON.150	GMP 1 - Detailed Internal Estimate Review and Executive Review	7	04-Aug-25 A	12-Aug-25 A																																																																																		
38	GMP1.PRECON.180	GMP 1 - Compile Deliverable and Submit GMP to CoD	3	13-Aug-25 A	19-Aug-25 A																																																																																		
39	GMP1.PRECON.190	GMP 1 - Review/Acknowledged by CoD with New Directions	10	18-Aug-25 A	03-Oct-25 A																																																																																		
40	GMP1.PRECON.230	GMP 1 - Resubmit Formal Recommendation for GMP1 to the CoD	10	06-Oct-25	17-Oct-25																																																																																		
41	GMP1.PRECON.200	GMP 1 - Acceptance by CoD City Council and Approval of GMP1	60	20-Oct-25	16-Jan-26																																																																																		
42	GMP 2 - 90% GMP DEVELOPMENT		161	17-Oct-25	09-Jun-26																																																																																		
43	GMP2.PRECON.10	GMP 2 - Kickoff 90% GMP 2	0		17-Oct-25																																																																																		
44	GMP2.PRECON.70	GMP 2 - Develop GMP 2 Bidding Documents	64	20-Oct-25	22-Jan-26																																																																																		
45	GMP2.PRECON.130	GMP 2 - CoD Review Bidding Documents	10	23-Jan-26	05-Feb-26																																																																																		

#	Activity ID	Activity Name	OD	Start	Finish	2026					2027					2028					2029					2030					2031														
						S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
191	PROC.PKG1.1730	Submittal Package Development - Electrical Weir Gates	40	06-Aug-26	01-Oct-26																																								
192	PROC.PKG1.1760	CMAR Submittal Review - Electrical Weir Gates	5	02-Oct-26	08-Oct-26																																								
193	PROC.PKG1.1740	EOR Submittal Review - Electrical Weir Gates	10	09-Oct-26	22-Oct-26																																								
194	PROC.PKG1.1750	Fabrication and Delivery - Electrical Weir Gates	90	23-Oct-26	04-Mar-27																																								
195	20 - Slide Gates (72"X108", 36"X48", 48"X96", 36"X96")		185	10-Jun-26	04-Mar-27																																								
196	PROC.PKG1.1670	Issue / Execute Contract Agreement - Slide Gates (72"X108", 36"X48", 48"X96", 36"X96")	40	10-Jun-26	05-Aug-26																																								
197	PROC.PKG1.1680	Submittal Package Development - Slide Gates (72"X108", 36"X48", 48"X96", 36"X96")	40	06-Aug-26	01-Oct-26																																								
198	PROC.PKG1.1710	CMAR Submittal Review - Slide Gates (72"X108", 36"X48", 48"X96", 36"X96")	5	02-Oct-26	08-Oct-26																																								
199	PROC.PKG1.1690	EOR Submittal Review - Slide Gates (72"X108", 36"X48", 48"X96", 36"X96")	10	09-Oct-26	22-Oct-26																																								
200	PROC.PKG1.1700	Fabrication and Delivery - Slide Gates (72"X108", 36"X48", 48"X96", 36"X96")	90	23-Oct-26	04-Mar-27																																								
201	25 - STORAGE POND		185	10-Jun-26	04-Mar-27																																								
202	25 - Aerators		185	10-Jun-26	04-Mar-27																																								
203	PROC.PKG1.1770	Issue / Execute Contract Agreement - Aerators	40	10-Jun-26	05-Aug-26																																								
204	PROC.PKG1.1780	Submittal Package Development - Aerators	40	06-Aug-26	01-Oct-26																																								
205	PROC.PKG1.1810	CMAR Submittal Review - Aerators	5	02-Oct-26	08-Oct-26																																								
206	PROC.PKG1.1790	EOR Submittal Review - Aerators	10	09-Oct-26	22-Oct-26																																								
207	PROC.PKG1.1800	Fabrication and Delivery - Aerators	90	23-Oct-26	04-Mar-27																																								
208	25 - Pond Slide Gate and Electrical Weir Gate		185	10-Jun-26	04-Mar-27																																								
209	PROC.PKG1.1350	Issue / Execute Contract Agreement - Pond Slide Gate and Electrical Weir Gate	40	10-Jun-26	05-Aug-26																																								
210	PROC.PKG1.1360	Submittal Package Development - Pond Slide Gate and Electrical Weir Gate	40	06-Aug-26	01-Oct-26																																								
211	PROC.PKG1.1370	CMAR Submittal Review - Pond Slide Gate and Electrical Weir Gate	5	02-Oct-26	08-Oct-26																																								
212	PROC.PKG1.1380	EOR Submittal Review - Pond Slide Gate and Electrical Weir Gate	10	09-Oct-26	22-Oct-26																																								
213	PROC.PKG1.1410	Fabrication and Delivery - Pond Slide Gate and Electrical Weir Gate	90	23-Oct-26	04-Mar-27																																								
214	ELECTRICAL LONG LEAD-1		395	10-Jun-26	04-Jan-28																																								
215	Electrical - MCC		395	10-Jun-26	04-Jan-28																																								
216	PROC.PKG2.3240	Issue / Execute Contract Agreement - MCC PKG1	40	10-Jun-26	05-Aug-26																																								
217	PROC.PKG2.3250	Submittal Package Development - MCC PKG1	80	06-Aug-26	30-Nov-26																																								
218	PROC.PKG2.3280	CMAR Submittal Review - MCC PKG1	5	01-Dec-26	07-Dec-26																																								
219	PROC.PKG2.3260	EOR Submittal Review - MCC PKG1	10	08-Dec-26	21-Dec-26																																								
220	PROC.PKG2.3270	Fabrication and Delivery - MCC PKG1	260	22-Dec-26	04-Jan-28																																								
221	Electrical - Harmonic Correction Unit		305	06-Aug-26	19-Oct-27																																								
222	PROC.PKG2.3290	Issue / Execute Contract Agreement - Harmonic Correction Unit PKG1	40	06-Aug-26	01-Oct-26																																								
223	PROC.PKG2.3300	Submittal Package Development - Harmonic Correction Unit PKG1	30	02-Oct-26	12-Nov-26																																								
224	PROC.PKG2.3330	CMAR Submittal Review - Harmonic Correction Unit PKG1	5	13-Nov-26	19-Nov-26																																								
225	PROC.PKG2.3310	EOR Submittal Review - Harmonic Correction Unit PKG1	10	20-Nov-26	07-Dec-26																																								
226	PROC.PKG2.3320	Fabrication and Delivery - Harmonic Correction Unit PKG1	220	08-Dec-26	19-Oct-27																																								
227	Electrical - MDP-Ops Panels		295	02-Oct-26	02-Dec-27																																								
228	PROC.PKG2.3340	Issue / Execute Contract Agreement - MDP-Ops Panels PKG1	40	02-Oct-26	30-Nov-26																																								
229	PROC.PKG2.3350	Submittal Package Development - MDP-Ops Panels PKG1	30	01-Dec-26	14-Jan-27																																								
230	PROC.PKG2.3380	CMAR Submittal Review - MDP-Ops Panels PKG1	5	15-Jan-27	21-Jan-27																																								
231	PROC.PKG2.3360	EOR Submittal Review - MDP-Ops Panels PKG1	10	22-Jan-27	04-Feb-27																																								
232	PROC.PKG2.3370	Fabrication and Delivery - MDP-Ops Panels PKG1	210	05-Feb-27	02-Dec-27																																								
233	30 - BNR/MBR LONG LEAD		335	10-Jun-26	05-Oct-27																																								
234	30 - BNR LONG LEAD		335	10-Jun-26	05-Oct-27																																								
235	30 - BNR Influent Channel Slide Gate		185	01-Dec-26	23-Aug-27																																								
236	PROC.PKG2.3940	Issue / Execute Contract Agreement - BNR Influent Channel Slide Gates	40	01-Dec-26	28-Jan-27																																								
237	PROC.PKG2.3950	Submittal Package Development - BNR Influent Channel Slide Gates	40	29-Jan-27	25-Mar-27																																								
238	PROC.PKG2.3980	CMAR Submittal Review - BNR Influent Channel Slide Gates	5	26-Mar-27	01-Apr-27																																								
239	PROC.PKG2.3960	EOR Submittal Review - BNR Influent Channel Slide Gates	10	02-Apr-27	15-Apr-27																																								

#	Activity ID	Activity Name	OD	Start	Finish	2026					2027					2028					2029					2030					2031														
						S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
289	PROC.PKG2.2730	Fabrication and Delivery - Permeate Pumps	120	09-Oct-26	01-Apr-27																																								
290	30 - Sodium Hypochlorite & Citric Acid Pumps		205	10-Jun-26	01-Apr-27																																								
291	PROC.PKG2.3790	Issue / Execute Contract Agreement - Sodium Hypochlorite & Citric Acid Pumps	40	10-Jun-26	05-Aug-26																																								
292	PROC.PKG2.3800	Submittal Package Development - Sodium Hypochlorite & Citric Acid Pumps	30	06-Aug-26	17-Sep-26																																								
293	PROC.PKG2.3830	CMAR Submittal Review - Sodium Hypochlorite & Citric Acid Pumps	5	18-Sep-26	24-Sep-26																																								
294	PROC.PKG2.3810	EOR Submittal Review - Sodium Hypochlorite & Citric Acid Pumps	10	25-Sep-26	08-Oct-26																																								
295	PROC.PKG2.3820	Fabrication and Delivery - Sodium Hypochlorite & Citric Acid Pumps	120	09-Oct-26	01-Apr-27																																								
296	30 - Sodium Hypochlorite & Citric Acid Tanks		165	10-Jun-26	04-Feb-27																																								
297	PROC.PKG2.3840	Issue / Execute Contract Agreement - Sodium Hypochlorite & Citric Acid Tanks	40	10-Jun-26	05-Aug-26																																								
298	PROC.PKG2.3850	Submittal Package Development - Sodium Hypochlorite & Citric Acid Tanks	30	06-Aug-26	17-Sep-26																																								
299	PROC.PKG2.3880	CMAR Submittal Review - Sodium Hypochlorite & Citric Acid Tanks	5	18-Sep-26	24-Sep-26																																								
300	PROC.PKG2.3860	EOR Submittal Review - Sodium Hypochlorite & Citric Acid Tanks	10	25-Sep-26	08-Oct-26																																								
301	PROC.PKG2.3870	Fabrication and Delivery - Sodium Hypochlorite & Citric Acid Tanks	80	09-Oct-26	04-Feb-27																																								
302	30 - Backpulse Tanks		165	10-Jun-26	04-Feb-27																																								
303	PROC.PKG2.3890	Issue / Execute Contract Agreement - Backpulse Tanks	40	10-Jun-26	05-Aug-26																																								
304	PROC.PKG2.3900	Submittal Package Development - Backpulse Tanks	30	06-Aug-26	17-Sep-26																																								
305	PROC.PKG2.3930	CMAR Submittal Review - Backpulse Tanks	5	18-Sep-26	24-Sep-26																																								
306	PROC.PKG2.3910	EOR Submittal Review - Backpulse Tanks	10	25-Sep-26	08-Oct-26																																								
307	PROC.PKG2.3920	Fabrication and Delivery - Backpulse Tanks	80	09-Oct-26	04-Feb-27																																								
308	30 - MBR Cassette		285	10-Jun-26	26-Jul-27																																								
309	PROC.PKG2.1490	Issue / Execute Contract Agreement - MBR Cassette	40	10-Jun-26	05-Aug-26																																								
310	PROC.PKG2.1500	Submittal Package Development - MBR Cassette	30	06-Aug-26	17-Sep-26																																								
311	PROC.PKG2.1510	CMAR Submittal Review - MBR Cassette	5	18-Sep-26	24-Sep-26																																								
312	PROC.PKG2.1520	EOR Submittal Review - MBR Cassette	10	25-Sep-26	08-Oct-26																																								
313	PROC.PKG2.1550	Fabrication and Delivery - MBR Cassette	200	09-Oct-26	26-Jul-27																																								
314	35 - THICKENING/DEWATERING BUILDING		390	10-Jun-26	27-Dec-27																																								
315	35 - Screw Conveyors		390	10-Jun-26	27-Dec-27																																								
316	PROC.PKG2.2120	Issue / Execute Contract Agreement for Screw Conveyor	40	10-Jun-26	05-Aug-26																																								
317	PROC.PKG2.2130	Submittal Package Development for Screw Conveyor	75	06-Aug-26	19-Nov-26																																								
318	PROC.PKG2.2140	CMAR Submittal Review for Screw Conveyor	5	20-Nov-26	30-Nov-26																																								
319	PROC.PKG2.2150	EOR Submittal Review for Screw Conveyor	10	01-Dec-26	14-Dec-26																																								
320	PROC.PKG2.2180	Fabrication and Delivery for Screw Conveyor	260	15-Dec-26	27-Dec-27																																								
321	35 - Bridge Crane		215	10-Jun-26	15-Apr-27																																								
322	PROC.PKG2.2190	Issue / Execute Contract Agreement for Bridge Crane	40	10-Jun-26	05-Aug-26																																								
323	PROC.PKG2.2200	Submittal Package Development for Bridge Crane	30	06-Aug-26	17-Sep-26																																								
324	PROC.PKG2.2210	CMAR Submittal Review for Bridge Crane	5	18-Sep-26	24-Sep-26																																								
325	PROC.PKG2.2220	EOR Submittal Review for Bridge Crane	10	25-Sep-26	08-Oct-26																																								
326	PROC.PKG2.2230	Fabrication and Delivery for Bridge Crane	130	09-Oct-26	15-Apr-27																																								
327	35 - Sludge Pumps		235	10-Jun-26	13-May-27																																								
328	PROC.PKG2.2240	Issue / Execute Contract Agreement for Cake Pumps	40	10-Jun-26	05-Aug-26																																								
329	PROC.PKG2.2250	Submittal Package Development for Cake Pumps	30	06-Aug-26	17-Sep-26																																								
330	PROC.PKG2.2260	CMAR Submittal Review for Cake Pumps	5	18-Sep-26	24-Sep-26																																								
331	PROC.PKG2.2270	EOR Submittal Review for Cake Pumps	10	25-Sep-26	08-Oct-26																																								
332	PROC.PKG2.2280	Fabrication and Delivery for Cake Pumps	150	09-Oct-26	13-May-27																																								
333	35 - Polymer Storage Tank		155	10-Jun-26	21-Jan-27																																								
334	PROC.PKG2.2290	Issue / Execute Contract Agreement for Polymer Storage Tank	40	10-Jun-26	05-Aug-26																																								
335	PROC.PKG2.2300	Submittal Package Development for Polymer Storage Tank	30	06-Aug-26	17-Sep-26																																								
336	PROC.PKG2.2310	CMAR Submittal Review for Polymer Storage Tank	5	18-Sep-26	24-Sep-26																																								
337	PROC.PKG2.2320	EOR Submittal Review for Polymer Storage Tank	10	25-Sep-26	08-Oct-26																																								

#	Activity ID	Activity Name	OD	Start	Finish	2026					2027					2028					2029					2030					2031														
						S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
338	PROC.PKG2.2330	Fabrication and Delivery for Polymer Storage Tank	70	09-Oct-26	21-Jan-27																																								
339	35 - Polymer Skid		155	10-Jun-26	21-Jan-27																																								
340	PROC.PKG2.2440	Issue / Execute Contract Agreement for Polymer Skid	40	10-Jun-26	05-Aug-26																																								
341	PROC.PKG2.2450	Submittal Package Development for Polymer Skid	30	06-Aug-26	17-Sep-26																																								
342	PROC.PKG2.2460	CMAR Submittal Review for Polymer Skid	5	18-Sep-26	24-Sep-26																																								
343	PROC.PKG2.2470	EOR Submittal Review for Polymer Skid	10	25-Sep-26	08-Oct-26																																								
344	PROC.PKG2.2480	Fabrication and Delivery for Polymer Skid	70	09-Oct-26	21-Jan-27																																								
345	35 - Centrifuge Thickner		385	10-Jun-26	16-Dec-27																																								
346	PROC.PKG2.2340	Issue / Execute Contract Agreement for Centrifuge Thickner	40	10-Jun-26	05-Aug-26																																								
347	PROC.PKG2.2350	Submittal Package Development for Centrifuge Thickner	60	06-Aug-26	29-Oct-26																																								
348	PROC.PKG2.2360	CMAR Submittal Review for Centrifuge Thickner	5	30-Oct-26	05-Nov-26																																								
349	PROC.PKG2.2370	EOR Submittal Review for Centrifuge Thickner	10	06-Nov-26	19-Nov-26																																								
350	PROC.PKG2.2380	Fabrication and Delivery for Centrifuge Thickner	270	20-Nov-26	16-Dec-27																																								
351	35 - Centrifuge Dewaterer		385	10-Jun-26	16-Dec-27																																								
352	PROC.PKG2.2390	Issue / Execute Contract Agreement for Centrifuge Dewaterer	40	10-Jun-26	05-Aug-26																																								
353	PROC.PKG2.2400	Submittal Package Development for Centrifuge Dewaterer	60	06-Aug-26	29-Oct-26																																								
354	PROC.PKG2.2410	CMAR Submittal Review for Centrifuge Dewaterer	5	30-Oct-26	05-Nov-26																																								
355	PROC.PKG2.2420	EOR Submittal Review for Centrifuge Dewaterer	10	06-Nov-26	19-Nov-26																																								
356	PROC.PKG2.2430	Fabrication and Delivery for Centrifuge Dewaterer	270	20-Nov-26	16-Dec-27																																								
357	40 - DIGESTERS/HEAT EXCHANGER BLDG		245	10-Jun-26	27-May-27																																								
358	40 - Heat Exchangers		225	10-Jun-26	29-Apr-27																																								
359	PROC.PKG2.3390	Issue / Execute Contract Agreement - Heat Exchangers	40	10-Jun-26	05-Aug-26																																								
360	PROC.PKG2.3400	Submittal Package Development - Heat Exchangers	50	06-Aug-26	15-Oct-26																																								
361	PROC.PKG2.3430	CMAR Submittal Review - Heat Exchangers	5	16-Oct-26	22-Oct-26																																								
362	PROC.PKG2.3410	EOR Submittal Review - Heat Exchangers	10	23-Oct-26	05-Nov-26																																								
363	PROC.PKG2.3420	Fabrication and Delivery - Heat Exchangers	120	06-Nov-26	29-Apr-27																																								
364	40 - Digested Sludge Transfer Pumps		225	10-Jun-26	29-Apr-27																																								
365	PROC.PKG2.3640	Issue / Execute Contract Agreement - Digested Sludge Transfer Pumps	40	10-Jun-26	05-Aug-26																																								
366	PROC.PKG2.3650	Submittal Package Development - Digested Sludge Transfer Pumps	50	06-Aug-26	15-Oct-26																																								
367	PROC.PKG2.3680	CMAR Submittal Review - Digested Sludge Transfer Pumps	5	16-Oct-26	22-Oct-26																																								
368	PROC.PKG2.3660	EOR Submittal Review - Digested Sludge Transfer Pumps	10	23-Oct-26	05-Nov-26																																								
369	PROC.PKG2.3670	Fabrication and Delivery - Digested Sludge Transfer Pumps	120	06-Nov-26	29-Apr-27																																								
370	40 - Anaerobic Digesters and Mixers		245	10-Jun-26	27-May-27																																								
371	PROC.PKG2.3690	Issue / Execute Contract Agreement - Anaerobic Digesters and Mixers	40	10-Jun-26	05-Aug-26																																								
372	PROC.PKG2.3700	Submittal Package Development - Anaerobic Digesters and Mixers	50	06-Aug-26	15-Oct-26																																								
373	PROC.PKG2.3730	CMAR Submittal Review - Anaerobic Digesters and Mixers	5	16-Oct-26	22-Oct-26																																								
374	PROC.PKG2.3710	EOR Submittal Review - Anaerobic Digesters and Mixers	10	23-Oct-26	05-Nov-26																																								
375	PROC.PKG2.3720	Fabrication and Delivery - Anaerobic Digesters and Mixers	140	06-Nov-26	27-May-27																																								
376	40 - Waste Gas Burner		225	10-Jun-26	29-Apr-27																																								
377	PROC.PKG2.3740	Issue / Execute Contract Agreement - Waste Gas Burner	40	10-Jun-26	05-Aug-26																																								
378	PROC.PKG2.3750	Submittal Package Development - Waste Gas Burner	50	06-Aug-26	15-Oct-26																																								
379	PROC.PKG2.3780	CMAR Submittal Review - Waste Gas Burner	5	16-Oct-26	22-Oct-26																																								
380	PROC.PKG2.3760	EOR Submittal Review - Waste Gas Burner	10	23-Oct-26	05-Nov-26																																								
381	PROC.PKG2.3770	Fabrication and Delivery - Waste Gas Burner	120	06-Nov-26	29-Apr-27																																								
382	40 - Thickened Sludge Transfer Pumps		225	10-Jun-26	29-Apr-27																																								
383	PROC.PKG2.3590	Issue / Execute Contract Agreement - Thickened Sludge Transfer Pumps	40	10-Jun-26	05-Aug-26																																								
384	PROC.PKG2.3600	Submittal Package Development - Thickened Sludge Transfer Pumps	50	06-Aug-26	15-Oct-26																																								
385	PROC.PKG2.3630	CMAR Submittal Review - Thickened Sludge Transfer Pumps	5	16-Oct-26	22-Oct-26																																								
386	PROC.PKG2.3610	EOR Submittal Review - Thickened Sludge Transfer Pumps	10	23-Oct-26	05-Nov-26																																								

#	Activity ID	Activity Name	OD	Start	Finish	2026					2027					2028					2029					2030					2031														
						S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
436	PROC.PKG2.3510	EOR Submittal Review - Influent Channel (60" X 60")	10	08-Dec-26	21-Dec-26																																								
437	PROC.PKG2.3520	Fabrication and Delivery - Influent Channel (60" X 60")	140	22-Dec-26	12-Jul-27																																								
438	ELECTRICAL LONG LEAD			575	10-Jun-26	15-Sep-28																																							
439	Electrical - Generator			575	10-Jun-26	15-Sep-28																																							
440	PROC.PKG2.3440	Issue / Execute Contract Agreement - Generator	40	10-Jun-26	05-Aug-26																																								
441	PROC.PKG2.3450	Submittal Package Development - Generator	120	06-Aug-26	28-Jan-27																																								
442	PROC.PKG2.3480	CMAR Submittal Review - Generator	5	29-Jan-27	04-Feb-27																																								
443	PROC.PKG2.3460	EOR Submittal Review - Generator	10	05-Feb-27	18-Feb-27																																								
444	PROC.PKG2.3470	Fabrication and Delivery - Generator	400	19-Feb-27	15-Sep-28																																								
445	Electrical - MCC			395	10-Jun-26	04-Jan-28																																							
446	PROC.PKG2.1910	Issue / Execute Contract Agreement - MCC	40	10-Jun-26	05-Aug-26																																								
447	PROC.PKG2.1920	Submittal Package Development - MCC	80	06-Aug-26	30-Nov-26																																								
448	PROC.PKG2.1930	CMAR Submittal Review - MCC	5	01-Dec-26	07-Dec-26																																								
449	PROC.PKG2.1940	EOR Submittal Review - MCC	10	08-Dec-26	21-Dec-26																																								
450	PROC.PKG2.1970	Fabrication and Delivery - MCC	260	22-Dec-26	04-Jan-28																																								
451	Electrical - Harmonic Correction Unit			305	10-Jun-26	23-Aug-27																																							
452	PROC.PKG2.3040	Issue / Execute Contract Agreement - Harmonic Correction Unit	40	10-Jun-26	05-Aug-26																																								
453	PROC.PKG2.3050	Submittal Package Development - Harmonic Correction Unit	30	06-Aug-26	17-Sep-26																																								
454	PROC.PKG2.3060	CMAR Submittal Review - Harmonic Correction Unit	5	18-Sep-26	24-Sep-26																																								
455	PROC.PKG2.3070	EOR Submittal Review - Harmonic Correction Unit	10	25-Sep-26	08-Oct-26																																								
456	PROC.PKG2.3080	Fabrication and Delivery - Harmonic Correction Unit	220	09-Oct-26	23-Aug-27																																								
457	Electrical - MDP-Ops Panels			295	10-Jun-26	09-Aug-27																																							
458	PROC.PKG2.3090	Issue / Execute Contract Agreement - MDP-Ops Panels	40	10-Jun-26	05-Aug-26																																								
459	PROC.PKG2.3100	Submittal Package Development - MDP-Ops Panels	30	06-Aug-26	17-Sep-26																																								
460	PROC.PKG2.3110	CMAR Submittal Review - MDP-Ops Panels	5	18-Sep-26	24-Sep-26																																								
461	PROC.PKG2.3120	EOR Submittal Review - MDP-Ops Panels	10	25-Sep-26	08-Oct-26																																								
462	PROC.PKG2.3130	Fabrication and Delivery - MDP-Ops Panels	210	09-Oct-26	09-Aug-27																																								
463	60 - MV BUILDING			460	10-Jun-26	04-Apr-28																																							
464	Electrical - Diesel Generators			445	10-Jun-26	14-Mar-28																																							
465	PROC.PKG2.4090	Issue / Execute Contract Agreement - Diesel Generators	40	10-Jun-26	05-Aug-26																																								
466	PROC.PKG2.4100	Submittal Package Development - Diesel Generators	80	06-Aug-26	30-Nov-26																																								
467	PROC.PKG2.4130	CMAR Submittal Review - Diesel Generators	5	01-Dec-26	07-Dec-26																																								
468	PROC.PKG2.4110	EOR Submittal Review - Diesel Generators	10	08-Dec-26	21-Dec-26																																								
469	PROC.PKG2.4120	Fabrication and Delivery - Diesel Generators	310	22-Dec-26	14-Mar-28																																								
470	Electrical - 10 MVA Transformers			460	10-Jun-26	04-Apr-28																																							
471	PROC.PKG2.4140	Issue / Execute Contract Agreement - 10 MVA Transformers	40	10-Jun-26	05-Aug-26																																								
472	PROC.PKG2.4150	Submittal Package Development - 10 MVA Transformers	30	06-Aug-26	17-Sep-26																																								
473	PROC.PKG2.4180	CMAR Submittal Review - 10 MVA Transformers	5	18-Sep-26	24-Sep-26																																								
474	PROC.PKG2.4160	EOR Submittal Review - 10 MVA Transformers	10	25-Sep-26	08-Oct-26																																								
475	PROC.PKG2.4170	Fabrication and Delivery - 10 MVA Transformers	375	09-Oct-26	04-Apr-28																																								
476	Electrical - Distribution Switchgear			400	10-Jun-26	11-Jan-28																																							
477	PROC.PKG2.4040	Issue / Execute Contract Agreement - Distribution Switchgear	40	10-Jun-26	05-Aug-26																																								
478	PROC.PKG2.4050	Submittal Package Development - Distribution Switchgear	120	06-Aug-26	28-Jan-27																																								
479	PROC.PKG2.4080	CMAR Submittal Review - Distribution Switchgear	5	29-Jan-27	04-Feb-27																																								
480	PROC.PKG2.4060	EOR Submittal Review - Distribution Switchgear	10	05-Feb-27	18-Feb-27																																								
481	PROC.PKG2.4070	Fabrication and Delivery - Distribution Switchgear	225	19-Feb-27	11-Jan-28																																								
482	CONSTRUCTION			1046	10-Nov-25	02-Jan-30																																							
483	MOBILIZATION / DEMOBILIZATION			5	03-Feb-26	09-Feb-26																																							

ov-25 03-Feb-26 09-Feb-26 02-Jan-30

#	Activity ID	Activity Name	OD	Start	Finish	2026					2027					2028					2029					2030					2031														
						S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
533	10 - YARD PIPING - DR LINES			569	15-Apr-26	13-Jul-28	15-Apr-26 13-Jul-28																																						
534	IC.1220	E/L/B - 8" DR Reroute	20	15-Apr-26	12-May-26	E/L/B - 8" DR Reroute																																							
535	IC.1500	UV and Parshall Flume Underslab Drain Lines	2	06-Jul-26*	07-Jul-26	UV and Parshall Flume Underslab Drain Lines																																							
536	NEW.1650	E/L/B - 24" DR Line	10	26-Feb-27	11-Mar-27	E/L/B - 24" DR Line																																							
537	NEW.1640	E/L/B - 18" DR Line	16	12-Mar-27	02-Apr-27	E/L/B - 18" DR Line																																							
538	NEW.1720	E/L/B - 12" DR Line	10	05-Apr-27	16-Apr-27	E/L/B - 12" DR Line																																							
539	NEW.1660	E/L/B - 10" DR Line	19	19-Apr-27	13-May-27	E/L/B - 10" DR Line																																							
540	IC.1100	E/L/B - 8" DR	30	14-May-27	25-Jun-27	E/L/B - 8" DR																																							
541	NEW.1630	E/L/B - 12" South DR Line	11	28-Jun-27	13-Jul-27	E/L/B - 12" South DR Line																																							
542	NEW.1280	E/L/B - 12" DR Line From EQ Basin	3	14-Jul-27	16-Jul-27	E/L/B - 12" DR Line From EQ Basin																																							
543	NEW.1230	E/L/B - 12" PVC from EQ Basin - Addendum 1	3	22-Mar-28	24-Mar-28	E/L/B - 12" PVC from EQ Basin - Addendum 1																																							
544	NEW.1330	E/L/B - E/L/B 20" DR from Peak Storage Basin	6	22-Jun-28	29-Jun-28	E/L/B - E/L/B 20" DR from Peak Storage Basin																																							
545	NEW.1320	E/L/B - 18" FRP from Peak Basin - Addendum #1	9	30-Jun-28	13-Jul-28	E/L/B - 18" FRP from Peak Basin - Addendum #1																																							
546	10 - YARD PIPING - POTABLE WATER (PW)			271	26-Feb-27	22-Mar-28	26-Feb-27 22-Mar-28																																						
547	NEW.1390	E/L/B - 6" Potable Water Line	61	26-Feb-27	21-May-27	E/L/B - 6" Potable Water Line																																							
548	IC.1190	E/L/B Fire Hydrant Line	40	24-May-27	20-Jul-27	E/L/B Fire Hydrant Line																																							
549	NEW.1380	E/L/B - 2" Potable Water Line	14	03-Mar-28	22-Mar-28	E/L/B - 2" Potable Water Line																																							
550	10 - YARD PIPING - NON POTABLE WATER (NPW)			180	26-Feb-27	09-Nov-27	26-Feb-27 09-Nov-27																																						
551	IC.1210	E/L/B - 6" NPW	52	26-Feb-27	10-May-27	E/L/B - 6" NPW																																							
552	IC.1270	E/L/B - 6" NPW Tie In (TP-9)	4	11-May-27	14-May-27	E/L/B - 6" NPW Tie In (TP-9)																																							
553	NEW.1620	E/L/B - 24" Non Potable Water	119	24-May-27	09-Nov-27	E/L/B - 24" Non Potable Water																																							
554	10 - YARD PIPING - JOINT STRUCTURE			505	01-Apr-26	29-Mar-28	01-Apr-26 29-Mar-28																																						
555	IC.1510	Junction Structure Shoring	5	01-Apr-26	07-Apr-26	Junction Structure Shoring																																							
556	IC.1520	Excavate Junction Structure (Headworks)	10	08-Apr-26	21-Apr-26	Excavate Junction Structure (Headworks)																																							
557	IC.1530	Junction Structure Mud Mat (Headworks)	2	22-Apr-26	23-Apr-26	Junction Structure Mud Mat (Headworks)																																							
558	IC.1540	F/P/S Junction Structure (Placement 1)	20	24-Apr-26	21-May-26	F/P/S Junction Structure (Placement 1)																																							
559	IC.1550	F/P/S Junction Structure (Placement 2)	20	22-May-26	19-Jun-26	F/P/S Junction Structure (Placement 2)																																							
560	IC.1560	F/P/S Junction Structure (Placement 3)	20	22-Jun-26	20-Jul-26	F/P/S Junction Structure (Placement 3)																																							
561	IC.1570	F/P/S Junction Structure (Placement 4)	20	21-Jul-26	17-Aug-26	F/P/S Junction Structure (Placement 4)																																							
562	IC.1580	Backfill Junction Structure	10	16-Mar-28	29-Mar-28	Backfill Junction Structure																																							
563	10 - YARD PIPING - PROCESS UG			380	05-Jan-27	30-Jun-28	05-Jan-27 30-Jun-28																																						
564	NEW.1270	E/L/B - 18" WAS Line and 18" Cake Effluent Line	22	05-Jan-27	03-Feb-27	E/L/B - 18" WAS Line and 18" Cake Effluent Line																																							
565	NEW.1220	E/L/B - 30" Membrane Effluent (MEF)	40	26-Jan-28	21-Mar-28	E/L/B - 30" Membrane Effluent (MEF)																																							
566	NEW.1370	E/L/B - 2" Ferric Line	25	22-Mar-28	25-Apr-28	E/L/B - 2" Ferric Line																																							
567	NEW.1260	E/L/B - 24" Process Air Line	3	28-Jun-28	30-Jun-28	E/L/B - 24" Process Air Line																																							
568	15 - OVERS MANAGEMENT			276	12-Mar-26	13-Apr-27	12-Mar-26 13-Apr-27																																						
569	2I.1000	Remove Overs - 50% West Pile North	24	12-Mar-26*	14-Apr-26	Remove Overs - 50% West Pile North																																							
570	2I.1010	Remove Overs - East Pile	18	28-Jul-26*	20-Aug-26	Remove Overs - East Pile																																							
571	2I.1020	Remove Overs - 50% West Pile South	24	11-Mar-27*	13-Apr-27	Remove Overs - 50% West Pile South																																							
572	20 - HEADWORKS/LIFTSTATION/GRIT			788	15-Apr-26	24-May-29	15-Apr-26 24-May-29																																						
573	1A.1290	Mass Excavate and Shoring - Headworks Shoring	12	15-Apr-26	30-Apr-26	Mass Excavate and Shoring - Headworks Shoring																																							
574	1A.1000	Mass Excavate and Shoring - Headworks (Retired)	0	23-Apr-26	23-Apr-26	Mass Excavate and Shoring - Headworks (Retired)																																							
575	1A.1300	Mass Excavate and Shoring - Headworks Dewatering System	5	01-May-26	07-May-26	Mass Excavate and Shoring - Headworks Dewatering System																																							
576	1A.1310	Mass Excavate and Shoring - Course Screen Area	30	08-May-26	19-Jun-26	Mass Excavate and Shoring - Course Screen Area																																							
577	1A.1320	Mass Excavate and Shoring - Lift Station	33	22-Jun-26	06-Aug-26	Mass Excavate and Shoring - Lift Station																																							
578	1A.1330	Mass Excavate and Shoring - Place Mud Mat	2	07-Aug-26	10-Aug-26	Mass Excavate and Shoring - Place Mud Mat																																							
579	CONCRETE			605	11-Aug-26	03-Jan-29	11-Aug-26 03-Jan-29																																						
580	LIFT STATION			345	11-Aug-26	21-Dec-27	11-Aug-26 21-Dec-27																																						
581	1A.1010	F/P/S Foundation	30	11-Aug-26	22-Sep-26	F/P/S Foundation																																							

EXHIBIT C – TECHNICAL SPECIFICATIONS

Technical Specifications as specified in EXHIBIT B – APPROVED GMP PROPOSAL are set forth herein in full OR made part of this Agreement by reference OR made part of this Agreement as a separate attachment.

EXHIBIT D – CONSTRUCTION DRAWINGS

Construction Drawings as specified in EXHIBIT B – APPROVED GMP PROPOSAL are made part of this Agreement by reference and on file with the:

- Design Professional
- City of Denton Project Manager
- CM@Risk Contractor

EXHIBIT E – GENERAL CONDITIONS (VERTICAL PROJECTS VERSION)

Exhibit E – General Conditions

for the following PROJECT:

CONSTRUCTION MANAGER AT RISK FOR PCWRP HEADWORKS AND EXPANSION PROJECT

THE CITY:

City of Denton
215 East McKinney Street
Denton, Texas 76201

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Article 1. GENERAL PROVISIONS

Section 1.1 Basic Definitions

a. The Contract Documents

The Contract Documents are enumerated in the Agreement between the City and CM@Risk (hereinafter the Agreement or Contract) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Proposal Documents, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Design Professional.

b. The Contract

The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the CM@Risk and the Design Professional or the Design Professional's consultants, (2) between the City and a Subcontractor or a Sub-subcontractor, (3) between the City and the Design Professional or the Design Professional's consultants, or (4) between any persons or entities other than the City and the CM@Risk. The Design Professional shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Design Professional's duties. This Agreement was the result of negotiations between the City and CM@Risk, and has been reviewed by the City, CM@Risk and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party. The terms "Agreement" and "Contract" shall be used interchangeably to have the same meaning as defined in this Section 1.1.b.

c. The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

d. Design Documents

Design Documents are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design Professional and the Design Professional's consultants under their respective professional services agreements. Design Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, the Project Manual and other similar materials.

e. Construction Management Plan

The Construction Management Plan is prepared by the CM@Risk for its use in managing the Work and is not a Contract Document. The Construction Management Plan must include, at a minimum and without limitation, the following separate deliverables, which are subject to review and approval by the Design Professional and City:

- i. Safety and Logistics Plan;

- ii. CM@Risk's Construction Schedule;
 - iii. Cost Management Plan, Control Estimate and Schedule of Values;
 - iv. Quality Management, Commissioning and Turnover Plan; and
 - v. Information Management System.
- f. As-Built Documents

The As-Built Documents are the Drawings, Specifications, and addenda thereto that may be updated by the CM@Risk to accurately reflect the actual Work in place, including without limitation, the incorporation of Change Orders, responses to the CM@Risk's requests for information, Design Professional's supplemental instructions, field modifications, and other similar changes made to the Work during construction. The As-Built documents shall conform to the format and compatibility requirements of the Contract Documents including Section 2.10 of the Contract.
- g. Work Breakdown Structure

The Project's Work Breakdown Structure ("WBS") is a deliverable-oriented, hierarchical organization of the Project components to be executed by the City, and its accompanying numbering system. The WBS will be mutually agreed upon by the City and Design Professional and used by the CM@Risk.
- h. Equal to (or Approved Equal)

Products by manufacturers and information about those products other than those products specified in the Contract Documents which the CM@Risk may submit for substitution as equal to those products specified in the Contract Documents; which may be incorporated in the Work after using the process specified in the Contract Documents for review and acceptance by the Design Professional and acceptance of same by the City.
- i. Underground Facilities

All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- j. Force Majeure

An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond CM@Risk's control, not caused by the negligent act or omission of CM@Risk or breach of this Agreement, its Subcontractors, or anyone else for whom CM@Risk is responsible, and not caused by CM@Risk's breach of a project labor or a "no strike" agreement.
- k. Knowledge

The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the CM@Risk, shall be interpreted to mean that which the CM@Risk knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the Work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a

diligent and prudent contractor familiar with the Work and in accordance with the highest standards in the construction profession.

- l. Proposal
The offer or proposal of an Offeror submitted on the prescribed form setting forth the prices for the Work to be performed.
- m. Offeror
The individual or entity that submits a Proposal directly to City.
- n. Proposal Documents
The Proposal Requirements and the proposed Contract Documents including all addenda.
- o. Proposal Requirements
The Advertisement or Request for Proposal, Invitation to Offerors, Instructions to Offerors, Offeror's Bond or other Proposal security, the Proposal Form, and the Proposal with any attachments.
- p. Notice of Award
A written notice given by City to the Successful Offeror stating that upon timely compliance by the Successful Offeror with the conditions precedent listed in such notice, City will sign and deliver the Agreement.
- q. Calendar Day
A day consisting of 24 hours measures from midnight to the next midnight. A "day" or "Day" unless otherwise defined shall mean a Calendar Day.
- r. Business Day
A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
- s. Notice to Proceed
A written instrument from the City to the CM@Risk requiring the CM@Risk to proceed with performance of activities, including, but not limited to development of submittals, ordering of materials, and any other services (the "Preconstruction Services") required to prepare for and expedite the construction of the Work as required by the Contract Documents; and complete the Work (the "Construction Services").
- t. Any terms not defined herein shall have the meaning as set forth in the Agreement.

Section 1.2 Correlation and Intent of the Contract Documents

- a. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the CM@Risk. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the CM@Risk shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Where a conflict occurs between or within standards, specifications, and drawings, the more stringent or higher quality requirements shall apply. The precedence and coordination of the Contract Documents are as follows:
 - .1 Any addenda and modifications to the Drawings and Specifications take precedence over any earlier Contract Documents.
 - .2 Should there be a conflict within the Specifications, or within the Drawings, or between the Drawings and Specification, the Design Professional

shall decide which stipulation will provide the best installation and its decision shall be final.

.3 The Drawing and Specifications are intended to coordinate with each other. Anything shown on the Drawings but not mentioned in the Specification or vice-versa, or anything not expressly set forth in either, but which is reasonably implied, shall be furnished as though specifically shown and mentioned in both without any extra charge.

.4 The Drawings, for purposes of clearness and legibility, are essentially diagrammatic, and although the sizes and locations of equipment are shown to scale wherever possible, the CM@Risk, Subcontractors, and Sub-subcontractors are required to familiarize themselves with all the Work required by the Contract Documents. Each CM@Risk, Subcontractor, and Sub-subcontractor shall properly coordinate its work with that of the City and all Separate Contractors. It is not within the scope of the Drawings to show all necessary offsets, obstructions or structural conditions. It shall be the responsibility of each CM@Risk to plan, coordinate, and install its work in such a manner so as to conform to the structure. Any conflict within the Drawings shall be referred to the Design Professional for disposition prior to the installation of any affected work.

.5 Figured dimensions contained in the Contract Documents shall be accurately followed, even though they differ from scaled measurements. No work shown on the plans, the dimensions of which are not figured, shall be executed until instructions have been obtained from the Design Professional as to the dimensions to be used. Larger scale Drawings shall have preference over smaller scale drawings, but discrepancies shall be referred to the Design Professional for interpretation.

.6 **Underground Facilities**

Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Design Professional by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Contract Documents:

City and Design Professional shall not be responsible for the accuracy or completeness of any such information or data provided by others; and the cost of all of the following are included in the Contract Price, and CM@Risk shall have full responsibility for:

- reviewing and checking all information and data;
- verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
- coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and

the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

Not Shown or Indicated: If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then CM@Risk shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith, identify the owner of such Underground Facility and give notice to that owner and to City. CM@Risk shall be responsible for the safety and protection of such discovered Underground Facility.

If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 7.

Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

.7 Reliance by CM@Risk on Technical Data:

CM@Risk is provided certain technical data with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. CM@Risk may not make any Contract Claim against City, or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

the completeness or accuracy of such reports and drawings for CM@Risk's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CM@Risk, and safety precautions and programs incident thereto; or

other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

the contents of other Site-related documents made available to CM@Risk, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or

any CM@Risk interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

- i. The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

- b. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the CM@Risk in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- c. Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

Section 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents that are a part of this Contract.

Section 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

Section 1.5 Ownership and Use of Design Documents

- a. Submittal or distribution of the Design Documents or any portion thereof to meet official laws, statutes, ordinances and regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the City’s reserved rights.
- b. The CM@Risk, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Design Documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Design Documents. The CM@Risk, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Design Documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the City.

Section 1.6 Notice

- a. Except as otherwise provided in Section 1.6.b, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement. In the event notice is provided by mail, it shall be sent certified return receipt requested.
- b. Notice of Claims as provided in Section 15.1.c shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

Section 1.7 Digital Data Use and Transmission

- a. The parties shall agree upon protocols governing the transmission and use of Design Documents or any other information or documentation in digital form. The parties will establish the protocols for the development, use, transmission, and exchange of digital data in writing, as mutually agreed.

- b. The CM@Risk, at any time upon the request of the City, shall immediately return and surrender to the City, without limitation, all electronic and hard copies of any Project-related materials, records, notices, memoranda, recordings, drawings, specifications, mock-ups and any other documents furnished by the City or the Design Professional to the CM@Risk.

Section 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without written agreement to protocols governing the use of, and reliance on, the information contained in the model, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

Section 1.9 The representations and warranties contained in the Contract Documents shall survive the complete performance of the Work or earlier termination of this Agreement.

Article 2. CITY

Section 2.1 General

- a. The City is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The City shall designate in writing a representative who shall have express authority to bind the City with respect to all matters requiring the City's approval or authorization. Except as otherwise provided in Section 4.2.a, the Design Professional does not have such authority. The term "City" means the City or the City's authorized representative.
- b. The City shall furnish the following information to a person, including the Design Professional or CM@Risk, who makes a request for information under Texas Government Code Chapter 2253, related to a payment, maintenance, or performance bond: (1) a certified copy of the relevant bond and any attachment to the bond; (2) the public work contract for which the bond was given; and (3) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, for obtaining information concerning licensed insurance companies.
- c. **The City may obtain independent review(s) of the Design Professional's Design Documents, or of any document or other materials submitted by the CM@Risk, by a separate architect, engineer, contractor, cost estimator or any other consultant they deem necessary and put under contract to or cause to be employed by the City. Such independent review shall be undertaken at the City's expense in a timely manner and shall not delay the orderly progress of the Work. The Design Professional and CM@Risk shall cooperate with such City's other consultants fully and respond to their reviews and comments in writing in a timely and comprehensive manner. This provision shall not be interpreted to require the City to obtain an independent review or imply that the City is in any way assuming responsibility for the work of the Design Professional and CM@Risk.**

Section 2.2 Omitted.

Section 2.3 Information and Services Required of the City

- a. Omitted.
- b. The City shall retain a Design Professional lawfully licensed to practice architecture or engineering as applicable, or an entity lawfully practicing architecture or engineering, as applicable, in the jurisdiction where the Project is located. That person or entity is identified as the Design Professional in the Agreement and is referred to throughout the Contract Documents as if singular in number.
- c. If the employment of the Design Professional terminates, the City shall employ a successor whose status under the Contract Documents shall be that of the Design Professional.
- d. The City shall furnish surveys describing physical characteristics, legal limitations and utility locations for the Site of the Project, and a legal description of the Site. The CM@Risk shall be entitled to rely on the accuracy of information furnished by the City but shall exercise proper precautions relating to the safe performance of the Work.
- e. The City shall furnish information or services required of the City by the Contract Documents with reasonable promptness. The City shall also furnish any other information or services under the City's control and relevant to the CM@Risk's performance of the Work with reasonable promptness after receiving the CM@Risk's written request for such information or services.
- f. Unless otherwise provided in the Contract Documents, the City shall furnish to the CM@Risk one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.b.
- g. The foregoing are, without limitation and in addition to, the other duties and responsibilities of the City specified in Article 6 and Article 9.

Section 2.4 City's Right to Stop the Work

If the CM@Risk fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the City may issue a written order to the CM@Risk to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the CM@Risk or any other person or entity, except to the extent required by Section 6.1.c nor shall the exercise of the City's right hereunder give rise to any claim by CM@Risk for additions to the Contract Price or Contract Time.

Section 2.5 Omitted.

Section 2.6 Extent of City Rights

- a. The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the City granted in the Contract Documents; at law; or in equity.
- b. In no event shall the City or Design Professional have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work. Notwithstanding anything else herein, and without limitation, any review(s), independent or otherwise, or approval(s) by the City or Design Professional of the Design Documents, the Contract Documents, the CM@Risk's

Construction Management Plan(s), the CM@Risk's Construction Schedule, shop drawings, submittals, meeting minutes or other CM@Risk's services, deliverables or activities; nor the exercising of any of the rights and authority granted the City or Design Professional in the Contract Documents shall in any way reduce, diminish, or otherwise affect the CM@Risk's responsibilities, duties and accountability to the City for, without limitation, the construction means, methods, techniques, sequences, procedures or for safety precautions, and the provision of the Work per the requirements of the Contract Documents.

- c. The City reserves the right to have the CM@Risk and/or Subcontractors remove person(s) and/or personnel from any and all work on the Project for cause but without cost to the City. Such requests from the City will be made in writing and may be done directly or indirectly through the Design Professional or on-site representative. "Cause" may include, but is not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the project, the facility or others, poor management, cause delay or delays, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The CM@Risk shall provide replacement person(s) and/or personnel acceptable to the City at no cost to the City.

Article 3. CONTRACTOR

Section 3.1 General

- a. The CM@Risk is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The CM@Risk shall be lawfully licensed, if required in the jurisdiction where the Project is located, Denton County, Texas. The CM@Risk shall designate in writing a representative who shall have express authority to bind the CM@Risk with respect to all matters under this Contract. The term "CM@Risk" means the CM@Risk or the CM@Risk's authorized representative.
- b. The CM@Risk shall perform the Work in accordance with the Contract Documents.
- c. The CM@Risk shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in the Design Professional's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the CM@Risk.

Section 3.2 Review of Contract Documents and Field Conditions by CM@Risk

- a. Execution of the Contract by the CM@Risk is a representation that the CM@Risk has visited the Site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the CM@Risk and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project Site and surrounding areas and generally prevailing climatic conditions; (ii) anticipated labor supply and costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues. The City and Design Professional assume no responsibility or liability for the physical condition

or safety of the Project Site, or any improvements located on the Project Site. Except as set forth in Section 10.3, the CM@Risk shall be solely responsible for providing a safe place for the performance of the Work. The City and Design Professional shall not be required to make any adjustment in either the Contract Price or the Contract Time in connection with any failure by the CM@Risk or any Subcontractor to have complied with the requirements of this Section 3.2.a.

- b. Because the Contract Documents are complementary, the CM@Risk shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the City pursuant to Section 2.3.d, shall take field measurements of and verify any existing conditions related to that portion of the Work, and shall observe and verify the impact of any conditions at the Site affecting it. These obligations are for the purpose of facilitating coordination and construction by the CM@Risk and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the CM@Risk shall promptly report to the Design Professional any errors, inconsistencies or omissions discovered by or made known to the CM@Risk as a request for information in such form as the Design Professional may require. If the CM@Risk performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Design Professional, the CM@Risk shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction per Section 12.2. It is recognized that the CM@Risk's review is made in the CM@Risk's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.
- c. The CM@Risk is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the CM@Risk shall promptly report to the Design Professional any nonconformity discovered by or made known to the CM@Risk as a request for information in such form as the Design Professional may require.
- d. If the CM@Risk believes that additional cost or time is involved because of clarifications or instructions the Design Professional issues in response to the CM@Risk's notices or requests for information pursuant to Sections 3.2.b or 3.2.c, the CM@Risk shall submit Claims as provided in Article 15. If the CM@Risk fails to perform the obligations of Sections 3.2.b or 3.2.c, the CM@Risk shall pay such costs and damages to the City, subject to Section 15.1.g, as would have been avoided if the CM@Risk had performed such obligations. If the CM@Risk performs those obligations, the CM@Risk shall not be liable to the City or Design Professional for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents in its capacity as a contractor and not as a design professional.

Section 3.3 Supervision and Construction Procedures

- a. The CM@Risk shall supervise and direct the Work, using the CM@Risk's best skill and attention. The CM@Risk shall be solely responsible for, and have control over, construction

means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work in accordance with the Contract Documents.

- b. The CM@Risk shall be responsible to the City for acts and omissions of the CM@Risk's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the CM@Risk or any of its Subcontractors.
- c. The CM@Risk shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- d. The CM@Risk shall carefully check its own work and that of Subcontractors as the Work is being performed.
- e. During the finishing stages of the project, the CM@Risk shall make frequent inspections of the Work, with the applicable Subcontractor(s) involved, if any, with seven (7) days advance notice to the Design Professional, and the CM@Risk shall identify incorrect and faulty Work.
- f. The CM@Risk shall ensure that incorrect or faulty Work is corrected immediately.
- g. The CM@Risk shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the CM@Risk.

Section 3.4 Labor and Materials

- a. Unless otherwise provided in the Contract Documents, the CM@Risk shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- b. The CM@Risk is encouraged to consider products and systems that improve the Project and retain the character of the products specified, but do not alter the intent of the Project. However, except in the case of minor changes in the Work authorized by the Design Professional in accordance with Section 7.4, the CM@Risk may make substitutions only by a formal request for substitution of products in place of those specified with the consent of the City, after evaluation by the Design Professional in accordance with the conditions set forth below and elsewhere in the Contract Documents, and a Change Order or Construction Change Directive. The CM@Risk must submit to the Design Professional and the City, for each proposed substitution:
 - .1 A full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog "cut sheets", warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution;
 - .2 A written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the City and the Work in the event the substitution is acceptable;
 - .3 The adjustment, if any, in the Contract Price, in the event the substitution is acceptable;
 - .4 The adjustment, if any, in the time of completion of the Contract and the CM@Risk's Construction Schedule in the event the substitution is acceptable;

.5 An affidavit stating that (1) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (2) the CM@Risk accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Design Professional;

.6 Proposals for substitutions shall be submitted electronically to the Design Professional and the City's other consultants, if any, in sufficient time to allow no less than ten (10) business days for their respective reviews;

.7 No substitutions will be considered or allowed without the CM@Risk's submittal of complete substantiating data and information as stated herein; and

.8 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (1) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (2) specified products are unavailable through no fault of the CM@Risk; (3) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (4) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (5) when, in the judgment of the City or the Design Professional, a substitution would be substantially in the City's best interests, in terms of cost, time, or other considerations; and

.9 Whether or not any proposed substitution is accepted by the City, the City's other consultants, if any (if any), or the Design Professional, the CM@Risk shall reimburse the City for any fees charged by the Design Professional, and the City's other consultants for evaluating each proposed substitute.

- c. The CM@Risk shall enforce strict discipline and good order among the CM@Risk's employees and other persons carrying out the Work. The CM@Risk shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction Site or City's property by any construction personnel.
- d. All work under this Agreement shall be performed in a skillful and workmanlike manner in accordance with the highest industry standards.
- e. The CM@Risk shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The CM@Risk shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the CM@Risk shall make all necessary arrangements to reconcile, without delay, damage, or cost to the City and without recourse to the Design Professional or the City, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade; and

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the

Contract Documents because of such conflict involving any such labor agreement or regulation, the City may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

Section 3.5 Omitted.

Section 3.6 Taxes

The CM@Risk shall, to the extent not exempted, pay sales, consumer, use and similar taxes for the Work provided by the CM@Risk that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. In no event shall the City pay the CM@Risk for taxes that were not properly due or for which the City is exempt from paying under Texas law.

Section 3.7 Permits, Fees, Notices and Compliance with Laws

- a. Omitted.
- b. The CM@Risk shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.
- c. If the CM@Risk performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, regardless of whether such work is in accordance with Contract Documents, and without notice to the Design Professional that the Contract Documents are at variance with applicable laws, ordinances, rules, or regulations, the CM@Risk shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Codes and ordinances shall take full and complete precedence over anything contained in the Drawings, Specifications, or other Contract Documents, except where the Contract Documents call for Work or materials of higher standards than those required by codes or ordinances, in which case, the Contract Documents shall govern. Nothing contained in the Contract Documents shall be construed as authority for the CM@Risk to violate any applicable codes or ordinances in effect at the Site.
- d. Concealed or Unknown Conditions
If the CM@Risk encounters conditions at the Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the CM@Risk shall promptly provide notice to the City and the Design Professional before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Design Professional will promptly investigate such conditions and, if, in the Design Professional's opinion, they differ materially and cause an increase or decrease in the CM@Risk's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Price or Contract Time, or both. If, in the Design Professional's opinion, the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Professional shall promptly notify the City and

CM@Risk, stating the reasons. If either party disputes the Design Professional's recommendation, that party may submit a Claim as provided in Article 15.

- i. In no event shall any adjustment in the Contract Price or Contract Time be made for conditions which should have been known to the CM@Risk or would have been noticed by a CM@Risk of similar size and experience pursuant to its on-site inspection; by way of or conditions referenced in any other inspections or tests concerning the Site which have been made available to the CM@Risk or have been performed by the CM@Risk or its Subcontractors; are part of the Contract Documents; or are part of the materials provided by the CM@Risk to be used in constructing the improvements.
- e. If, in the course of the Work, the CM@Risk encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the CM@Risk shall immediately suspend any operations that would affect them and shall notify the City and Design Professional. Upon receipt of such notice, the City shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The CM@Risk shall continue to suspend such operations until otherwise instructed by the City but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Price and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.
- f. The CM@Risk shall comply with all applicable laws, statutes, rules, codes, orders, regulations, and ordinances, including, but not limited to, all immigration, environmental and safety laws, statutes, rules, codes, orders and regulations.

.1 The CM@Risk shall also maintain at all times during the term of the this Agreement (and for the time otherwise required by law) all records required by the United States Citizenship and Immigration Services ("USCIS"), including, without limitation, the completion and maintenance of the Form I-9 for each of CM@Risk's employees and shall respond at all times during the term of this Agreement in a timely fashion to any inspection request related to such I-9 forms by the CM@Risk, City or governmental agency or authority;

.2 Furthermore, during the term of this Agreement, and for the time otherwise required by law, CM@Risk shall cause its officers, directors, managers, agents, and employees to cooperate fully in all respects with any audit, inquiry, inspection, or investigation that may be conducted by the USCIS of the CM@Risk or any of its employees or subcontractors;

.3 The CM@Risk shall immediately, and in any event within two (2) hours of CM@Risk's first notice of an event described in this Section 3.7.f notify the City in writing and by in-person voice communications (not voicemail) of any unscheduled inspections, raids, investigations, inquiries, visits, or audits conducted by the USCIS, OSHA, or any other governmental agency or authority related to environmental, immigration, or employee safety issues of the CM@Risk, its agents, employees, its Design Professional, Subcontractors, or Sub-subcontractors;

.4 The CM@Risk shall, on a monthly basis during the term of this Agreement, conduct an audit of the I-9 forms for its employees and shall

promptly correct any defects or deficiencies that are identified as a result of such audit;

.5 The City may, at its sole discretion, terminate this Agreement immediately if, at any time during the term of this Agreement, the CM@Risk violates or is in breach of any provision of this Section 3.7.f or the USCIS determines that CM@Risk has not complied with any of the immigration laws, statutes, rules, codes, or regulations of the United States or any applicable state laws or regulations, or any applicable local ordinances, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigration Responsibility Act of 1996, as amended, and any successor statutes thereto;

.6 If an employee of the CM@Risk or if the CM@Risk is later determined to not have valid I-9 information then that employee shall be removed and barred from the Project Site at the CM@Risk's expense; and

.7 The CM@Risk shall require the Subcontractors, Sub-subcontractors and material suppliers to make the representations and warranties set forth in this Section 3.7.f and to be bound by the same requirements set forth herein.

Section 3.8 Allowances

- a. The CM@Risk shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct, but the CM@Risk shall not be required to employ persons or entities to whom the CM@Risk has reasonable objection.
- b. Unless otherwise provided in the Contract Documents,
 - .1 allowances shall cover the cost to the CM@Risk of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;
 - .2 CM@Risk's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances; and
 - .3 whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.b.1 and (2) changes in CM@Risk's costs under Section 3.8.b.2.
- c. Materials and equipment under an allowance shall be selected by the City with reasonable promptness.

Section 3.9 Superintendent

- a. The CM@Risk shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work including, but not limited to, weekends, evenings and nights, or as otherwise reasonably and mutually agreed in writing with the City, until all punch list items have been completed to the satisfaction of the Design Professional. No Subcontractor shall perform work on the Site without the presence of the

superintendent or assistant superintendent. The superintendent shall represent the CM@Risk, and communications given to the superintendent shall be as binding as if given to the CM@Risk.

- b. The CM@Risk, as soon as practicable after award of the Contract, shall notify the City and Design Professional of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the City or the Design Professional may notify the CM@Risk, stating whether the City or the Design Professional (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Design Professional to provide notice within the 14-day period shall constitute notice of no reasonable objection.
- c. All of the CM@Risk's proposed on-site personnel must be approved by the Design Professional and City. The CM@Risk shall not employ a proposed superintendent to whom the City or Design Professional has made reasonable and timely objection. The CM@Risk shall not change the superintendent without the City's consent, which shall not unreasonably be withheld or delayed. Substitution or other significant personnel changes which may affect the CM@Risk's on-site personnel must be preceded by written notification of the Design Professional and City no less than seven (7) business days before the anticipated event. Such proposed changes must be approved by the Design Professional and City. The CM@Risk shall designate a second person in charge in writing in the event the superintendent is temporarily absent due to illness, vacation, or any other cause(s).

Section 3.10 Omitted.

Section 3.11 Documents and Samples at the Site

The CM@Risk shall make available, to the City, Design Professional or their designees, at the Project Site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy and delivered to the Design Professional for submittal to the City upon completion of the Work as a record of the Work as constructed. The CM@Risk shall make available to the City or Design Professional for inspection and copying the record copy of the drawings, specifications, addenda, Change Orders and other Modifications, including all such documents maintained by the CM@Risk in electronic format, upon reasonable request of the City or Design Professional and, in any event, within twenty-four (24) hours of receipt by CM@Risk of a request from City or Design Professional for such review and/or copying. The City or Design Professional may request the record copy of the As-Built Documents, specifications, addenda, Change Orders and other Modifications of the Work to be updated before Substantial Completion to reflect the most current condition of the Project, as additional Cost of the Work paid as a Change Order at the City's expense. The City or Design Professional may require the CM@Risk to furnish the As-Built Documents in electronic format and may make copies of them prior to completion of the Work at the City's expense.

- i. The CM@Risk shall provide final electronic files and one "hard" copy of the Drawings and Specifications to the City updated to reflect the final condition of the Project with the final Application for Payment as a condition precedent to final payment.

Section 3.12 Omitted.

Section 3.13 Omitted.

Section 3.14 Cutting and Patching

- a. The CM@Risk shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.
- b. The CM@Risk shall not damage or endanger a portion of the Work or fully or partially completed construction of the City or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The CM@Risk shall not cut or otherwise alter construction by the City or a Separate Contractor except with written consent of the City and of the Separate Contractor. Consent shall not be unreasonably withheld. The CM@Risk shall not unreasonably withhold, from the City or a Separate Contractor, its consent to cutting or otherwise altering the Work.

Section 3.15 Cleaning Up

- a. The CM@Risk shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the CM@Risk shall remove waste materials, rubbish, the CM@Risk's tools, construction equipment, machinery, and surplus materials from and about the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.
- b. If the CM@Risk fails to clean up as provided in the Contract Documents, the City may do so and the City shall be entitled to reimbursement from the CM@Risk.

Section 3.16 Access to Work

The CM@Risk shall provide the City and Design Professional and their representatives with access to the Work in preparation and progress at all times wherever located, and shall provide proper and safe facilities for such access.

Section 3.17 Royalties, Patents and Copyrights

The CM@Risk shall pay all royalties and license fees. The CM@Risk shall defend suits or claims for infringement of copyrights and patent rights and shall defend and hold the City and Design Professional harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the City or Design Professional. However, if an infringement of a copyright or patent is discovered by, or made known to, the CM@Risk, the CM@Risk shall be responsible for the loss unless the information is promptly furnished to the Design Professional.

Section 3.18 Omitted.

Article 4. DESIGN PROFESSIONAL

Section 4.1 General

- a. The Design Professional is the person or entity retained by the City pursuant to Section 2.3.b and identified as such in the Agreement.
- b. Duties, responsibilities, and limitations of authority of the Design Professional as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the City, CM@Risk, and Design Professional. Consent shall not be unreasonably withheld.

Section 4.2 Administration of the Contract

- a. The Design Professional will provide administration of the Contract as described in the Contract Documents and will be City's representative during construction until the date the Design Professional issues the final Certificate for Payment. The Design Professional will have authority to act on behalf of the City only to the extent provided in the Contract Documents.
- b. The Design Professional will visit the Site at intervals appropriate to the stage of construction, or as otherwise agreed with the City, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, as the Work progresses and when fully completed, will be in accordance with the Contract Documents. However, the Design Professional will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Professional will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the CM@Risk's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.a.
- c. On the basis of the Site visits, the Design Professional will keep the City reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the City (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the CM@Risk, and (3) defects and deficiencies observed in the Work. The Design Professional will not be responsible for the CM@Risk's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Professional will not have control over or charge of and will not be responsible for acts or omissions of, the CM@Risk, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.
 - i. **NEITHER THE CITY NOR THE DESIGN PROFESSIONAL NOR THE CITY'S OTHER CONSULTANTS SHALL BE RESPONSIBLE OR LIABLE FOR THE SAFETY PROGRAM(S) DEVELOPED BY THE CM@RISK OR ITS SUBCONTRACTORS FOR THE SAFETY OF PERSONS AND PROPERTY, OR FOR COMPLIANCE WITH STATUTES, RULES, REGULATIONS, AND ORDERS APPLICABLE TO CONDUCT THE WORK. SHOULD ANY CM@RISK OR THEIR SUBCONTRACTOR(S), OR THE SUB-SUBCONTRACTOR(S) MAKE A CLAIM AGAINST THE INDEMNITEES, OR SHOULD THEY OR ANY GOVERNMENTAL ENTITY BRING ANY ACTION OR LEVY OR FINE OR PENALTY AGAINST THE INDEMNITEES ON ACCOUNT OF ANY SAFETY-RELATED DAMAGE OR VIOLATION OF LAW ALLEGED TO HAVE BEEN SUSTAINED, THE CM@RISK AGREES THAT IT WILL HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH**

VIOLATION, FINE, CLAIM OR SUIT, AND THAT IT WILL REIMBURSE THE INDEMNITEES THE COST OF DEFENDING SUCH SUIT, AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THEREFROM, THE CM@RISK SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.

d. Communications

The City and CM@Risk shall include the Design Professional in all communications about the Design Professional's services or professional responsibilities. The City shall promptly notify the Design Professional of the substance of any direct communications between the City and the CM@Risk otherwise relating to the Project. Communications by and with the Design Professional's consultants shall be through the Design Professional. Communications by and with Subcontractors and suppliers shall be through the CM@Risk. Communications by and with Separate Contractors shall be through the City. The Contract Documents may specify other communication protocols.

- i. Failure of CM@Risk to give the City or Design Professional written notice of CM@Risk's objections, within three (3) business days, to directives, instructions, interpretations, or minutes from the City or Design Professional, shall constitute final and conclusive consent on the part of the CM@Risk to such directives, instructions, interpretations, or minutes of the City or Design Professional.
 - ii. Any written notice from the City or Design Professional to the CM@Risk shall be sufficiently given when delivered to the last known business address of the CM@Risk, or to its registered or authorized agent, representative, or officer. Any written notice from the CM@Risk to the City shall be sufficiently given when personally delivered to the City's Office, Attn: Project Manager, or at such other address and to the attention of such person as the City may from time to time designate in writing.
- e. Based on the Design Professional's evaluations of the CM@Risk's Applications for Payment, the Design Professional will review and certify the amounts due the CM@Risk and will issue Certificates for Payment in such amounts.
- f. The Design Professional has authority to reject Work that does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable, the Design Professional will have the authority to require inspection or testing of the Work in accordance with Sections 13.4.b and 13.4.c, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Professional to the CM@Risk, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- g. The Design Professional will review and approve, or take other appropriate action upon, the CM@Risk's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Design Professional's action will be taken in accordance with the submittal schedule approved by the Design Professional or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Design Professional's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of

other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the CM@Risk as required by the Contract Documents. The Design Professional's review of the CM@Risk's submittals shall not relieve the CM@Risk of the obligations under Sections 1.2, 3.2.a, 3.3, 13.9, and the warranty provided in Exhibit V of the Contract. The Design Professional's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- h. The Design Professional will prepare Change Orders and Construction Change Directives and may order minor changes in the Work as provided in Section 7.4. The Design Professional will investigate and make recommendations regarding concealed and unknown conditions as provided in Section 3.7.d.
- i. The Design Professional will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the City, for the City's review and records, written warranties and related documents required by the Contract and assembled by the CM@Risk pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.
- j. If the City and Design Professional agree, the Design Professional will provide one or more Project representatives to assist in carrying out the Design Professional's responsibilities at the Site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents. The City shall notify the CM@Risk of any change in the duties, responsibilities and limitations of authority of the Project representatives.
- k. The Design Professional will interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the City or CM@Risk. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- l. Interpretations of the Design Professional will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations, the Design Professional will endeavor to secure faithful performance by both City and CM@Risk, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.
- m. The Design Professional's opinions on matters relating to aesthetic effect will be considered by the City when making the City's determination on these issues and the City's decision will be final if consistent with the intent expressed in the Contract Documents. Such City's determination shall be communicated through the Design Professional.
- n. The Design Professional will review and respond to requests for information about the Contract Documents. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Design Professional will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

Section 5.1 Definitions

- a. A Subcontractor is a person or entity who has a direct contract with the CM@Risk to perform a portion of the Work at the Site. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a Separate Contractor or the subcontractors of a Separate Contractor.
- b. A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

Section 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

- a. Unless otherwise stated in the Contract Documents, the CM@Risk, as soon as practicable after award of the Contract, shall notify the City and Design Professional of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Design Professional may notify the CM@Risk whether the City or the Design Professional (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Design Professional to provide notice within the 14-day period shall constitute notice of no reasonable objection.
- b. The CM@Risk shall not contract with a proposed person or entity to whom the City or Design Professional has made reasonable and timely objection. The CM@Risk shall not be required to contract with anyone to whom the CM@Risk has made reasonable objection.
- c. If the City or Design Professional has reasonable objection to a person or entity proposed by the CM@Risk, the CM@Risk shall propose another to whom the City or Design Professional has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Price and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor’s Work. However, no increase in the Contract Price or Contract Time shall be allowed for such change unless the CM@Risk has acted promptly and responsively in submitting names as required.
- d. The CM@Risk shall not substitute a Subcontractor, person, or entity for one previously selected if the City or Design Professional makes reasonable objection to such substitution.
- e. Upon request, the CM@Risk shall provide to the City an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.
- f. The CM@Risk shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the CM@Risk from full responsibility.

Section 5.3 Subcontractual Relations

- a. By appropriate written agreement, the CM@Risk shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CM@Risk by terms of the Contract Documents, and to assume toward the CM@Risk all the obligations and responsibilities, including responsibility for safety of the Subcontractor’s Work, which the CM@Risk, by the

Contract Documents, assumes toward the City , the City's other consultants and Design Professional. Each subcontract agreement shall preserve and protect the rights of the City , the City's other consultants, and Design Professional under the Contract Documents with respect to the Work to be performed by the Subcontractor. Where appropriate, the CM@Risk shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The CM@Risk shall make available for review for each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Notwithstanding the above, all Agreements with the City shall have all references to compensation redacted before disclosing to Subcontractors, sub-Subcontractors, or any other tier of vendor.

- b. All subcontracts shall specifically provide that the City is an intended third-party beneficiary of such subcontract. The CM@Risk's subcontractors, however, are not intended third-party beneficiaries of this Agreement by pass through, assignment, or otherwise, except as provided in the Contract Documents, and the City shall not be bound to CM@Risk's subcontract agreements.
- c. Whenever the CM@Risk receives payment pursuant to the Contract Documents, the CM@Risk shall make payments to each of its Subcontractors of any amounts actually received which were included in the CM@Risk's Application for Payment to the City for such subcontracts unless otherwise allowed to withhold payment by the terms and conditions of the subcontract or as allowed by law. The CM@Risk shall make such payments within ten (10) days of receipt of payment from the City in the same manner as the City is required to pay the CM@Risk under the Contract Documents if the Subcontractor is satisfactorily performing under its contract with the CM@Risk. Such payments from City to CM@Risk shall be imposed with an express trust to assure that payment is made to all Project Subcontractors, Sub-subcontractors, and suppliers. In addition to the express trust imposed upon such funds and the fiduciary duties incumbent upon the CM@Risk, Texas Property Code Chapter 162 shall apply.
- d. The CM@Risk shall monitor the Subcontractors, who shall pay all suppliers, Sub-subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to the Subcontractor any amounts actually received which were included in the Subcontractor's request for payment to the CM@Risk for such persons, within ten (10) days of receipt of payment from the CM@Risk. The construction payments made by the CM@Risk to the Subcontractor shall be trust funds as set forth in Chapter 162 of the Texas Property Code. If the Subcontractor fails to make such payments in the required manner, the Subcontractor shall pay said suppliers, Sub-subcontractors, and laborers interest as set forth in Chapter 162 of the Texas Property Code.
- e. At the time the Subcontractor submits a request for payment to the CM@Risk, the Subcontractor shall also submit to the CM@Risk a list of the Subcontractor's suppliers, Sub-subcontractors, and laborers. The CM@Risk shall be relieved of the requirements of this Section regarding payment in ten (10) days and interest payments until the Subcontractor submits such list. If the CM@Risk fails to make timely payments to the Subcontractor as required by this Section, the CM@Risk shall pay the Subcontractor interest as calculated under the provisions of Chapter 2251 of the Texas Government Code. Nothing in this Section 5.3 shall be construed to affect the retention provisions of any contract.

- f. The provisions of this Section 5.3 shall be made a part of each contract between the CM@Risk and each Subcontractor, either expressly or by incorporation by reference to this Section of the Contract Documents.

Section 5.4 Contingent Assignment of Subcontracts

- a. Each subcontract agreement for a portion of the Work may be assigned by the CM@Risk to the City, provided that
 - .1 assignment is effective only after termination of the Contract by the City for cause pursuant to Section 9.2 of the Contract and only for those subcontract agreements that the City accepts by notifying the Subcontractor and CM@Risk; and
 - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the City accepts the assignment of a subcontract agreement, the City assumes the CM@Risk's rights and obligations under the subcontract.

- b. If the Work in connection with a subcontract has been suspended for more than thirty (30) days, after termination of the Contract by the City pursuant to Section 9.2 of the Contract and the City accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct verifiable costs incurred by such Subcontractor as a result of the suspension.
- c. Upon assignment to the City under this Section 5.4, the City may further assign the subcontract to a successor contractor or other entity, including the performance bond Surety's takeover or completion contractor, which shall relieve the City of any legal responsibility under the subcontract.
- d. Each subcontract shall specifically provide that the City shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the assignment of the Subcontractor to the City after suspension and termination of the Contract, as provided in this Section 5.4. This Section 5.4 shall be construed to prohibit a pass through or assignment of rights, unless authorized by the City in writing

Section 5.5 City Payments to Subcontractors

- a. In the event of any default hereunder by the CM@Risk, or in the event the City or Design Professional fails to approve any Application for Payment that is not the fault of a Subcontractor, the City may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount paid the Subcontractor shall be deducted from the payment to the CM@Risk.
- b. Nothing contained herein shall create any obligation on the part of the City to make any payments to any Subcontractor, and no payment by the City to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

Article 6. CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

Section 6.1 City's Right to Perform Construction and to Award Separate Contracts

- a. The term “Separate Contractor(s)” shall mean other contractors retained by the City under separate agreements. The City reserves the right to perform construction or operations related to the Project with the City’s own forces, and with Separate Contractors in connection with other portions of the Project or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the CM@Risk claims that delay or additional cost is involved because of such action by the City, the CM@Risk shall make such Claim as provided in Article 15.
- b. When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term “CM@Risk” in the Contract Documents in each case shall mean the CM@Risk who executes each separate City-CM@Risk Agreement.
- c. The City shall provide for coordination of the activities of the City’s own forces and of each Separate Contractor with the Work of the CM@Risk, who shall cooperate with them. The CM@Risk shall participate with any Separate Contractors and the City in reviewing their construction schedules. The CM@Risk shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the CM@Risk, Separate Contractors, and the City until subsequently revised.
- d. Unless otherwise provided in the Contract Documents, when the City performs construction or operations related to the Project with the City’s own forces or with Separate Contractors, the City or its Separate Contractors shall have the same obligations and rights that the CM@Risk has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10 and 12.
- e. The CM@Risk accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are listed in and identified as part of the Contract Documents. The CM@Risk shall be responsible for such pre-purchased items, if any, as if the CM@Risk were the original purchaser. The Contract Price includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

Section 6.2 Mutual Responsibility

- a. The CM@Risk shall afford the City and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the CM@Risk’s construction and operations with theirs as required by the Contract Documents.
- b. If part of the CM@Risk’s Work depends on proper execution or results upon construction or operations by the City or a Separate Contractor, the CM@Risk shall, prior to proceeding with that portion of the Work, promptly notify the Design Professional of any apparent discrepancies or defects in the construction or operations by the City or Separate Contractor that would render it unsuitable for proper execution and results of the CM@Risk’s Work. Failure of the CM@Risk to notify the Design Professional of these apparent discrepancies or defects prior to proceeding with

the Work shall constitute an acknowledgment that the City's or Separate Contractor's completed or partially completed construction is fit and proper to receive the CM@Risk's Work.

- c. The CM@Risk shall reimburse the City for costs the City incurs that are payable to a Separate Contractor because of the CM@Risk's delays, improperly timed activities or defective construction. The City shall be responsible to the CM@Risk for costs the CM@Risk incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.
- d. The CM@Risk shall promptly remedy damage that the CM@Risk wrongfully causes to completed or partially completed construction or to property of the City or Separate Contractor as provided in Section 10.2.e.
- e. The City and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the CM@Risk in Section 3.14.
- f. Should the CM@Risk wrongfully delay or cause damage to the work or property of any Separate Contractor, the CM@Risk shall, upon due notice, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such Separate Contractor sues or initiates a judicial proceeding against the City on account of any delay or damage alleged to have been caused by the CM@Risk, the City shall notify the CM@Risk who shall defend such proceedings at the CM@Risk's expense. The City may fund the defense of such proceedings contemplated by this Section but, in any event, if any judgment or award against the City arises therefrom, the CM@Risk shall pay to satisfy it to the extent of CM@Risk's responsibility.
- g. **SHOULD ANY SUCH SEPARATE CONTRACTOR WRONGFULLY DELAYED OR DAMAGED BY THE CM@RISK OR PERSONS FOR WHOM THE CM@RISK IS RESPONSIBLE PER SECTION 6.2.f MAKE A CLAIM AGAINST THE INDEMNITEES, OR BRING ANY ACTION AGAINST THE INDEMNITEES, ON ACCOUNT OF THE DAMAGE ALLEGED TO HAVE BEEN SO SUSTAINED, THE CM@RISK SHALL HOLD THE INDEMNITEES HARMLESS AND DEFEND THEM AGAINST ANY SUCH CLAIM OR SUIT, AND SHALL REIMBURSE TO THE INDEMNITEES THE COST INCLUDING, WITHOUT LIMITATION, REASONABLE, ADDITIONAL ATTORNEY'S FEES INCURRED DEFENDING SUCH SUIT, AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THERE FROM, THE CM@RISK SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.**
- h. Should the CM@Risk be caused damage by any City's Separate Contractor(s)'s work, by reason of such City's Separate Contractor's failure to perform properly under its contract with the City, no action will lie against the City, and the City shall have no liability therefor, but the CM@Risk may assert its claims for damages directly against such City's Separate Contractor and the City shall reasonably assist the CM@Risk. by assign such rights to CM@Risk, unless otherwise prohibited under Texas law.
- i. Inasmuch as the completion of the building within the prescribed time is dependent very largely upon the close and active cooperation of all those engaged therein, it is, therefore expressly understood and agreed that each contractor shall lay out and install its work at such time(s) and in such manner as to not delay or interfere with the carrying forward of the work of the other contractors.
- j. Where the work of one contractor directly affects the conditions of the work of another contractor including, as examples only, and not limited to, providing shoring for backfilling, providing

protective covering for painting, providing adequate bracing of door jambs, etc., the contractor performing the work which will adversely affect another contractor's work shall be responsible for providing adequate protection based upon methods used to perform its work.

Section 6.3 City's Right to Clean Up

If a dispute arises among the CM@Risk, Separate Contractors, or the City as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the City may clean up and the Design Professional will allocate the cost among those responsible, which allocation shall be final.

Article 7. CHANGES IN THE WORK

Section 7.1 General

- a. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
- b. A Change Order shall be based upon agreement among the City, CM@Risk, and Design Professional. A Construction Change Directive requires agreement by the City and Design Professional and may or may not be agreed to by the CM@Risk. An order for a minor change in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time and reasonably inferable from the intent of the Contract Documents may be issued by the Design Professional alone.
- c. Changes in the Work shall be performed under applicable provisions of the Contract Documents. The CM@Risk shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 or as otherwise provided herein, a change in the Contract Price or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that City has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

Section 7.2 Change Orders

- a. A Change Order is a written instrument prepared by the Design Professional and signed by the City, CM@Risk, and Design Professional stating their agreement upon all of the following:
 - .1 The change in the Work;
 - .2 The amount of the adjustment, if any, in the Contract Price; and
 - .3 The extent of the adjustment, if any, in the Contract Time.
- b. Methods used in determining adjustments to the Contract Price may include those listed in Sections 7.3.c, 7.3.g and 7.3.j.

- c. Agreement on any Change Order constitutes a final settlement of all past and future claims, at law or in equity, concerning all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, delays, all direct and indirect costs, any claim for damages associated with such change, and any and all adjustments to the Contract Price and the construction schedule.
- d. Change Orders Requiring City Council Approval
The Contract Price may not be increased because of a Change Order unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants. The approval of the Denton City Council is required if a Change Order involves a decrease or an increase of \$50,000.00 or more. The original Contract Price of each Guaranteed Maximum Price Package also may not be increased under this Section 7.2 by more than twenty-five percent (25.0%) over the entire duration of the Project. The original Contract Price of each Guaranteed Maximum Price Package may not be increased by more than twenty-five percent (25%) over the entire duration of the Project for any reason; nor may the original Contract Price of each Guaranteed Maximum Price Package be decreased by more than twenty-five percent (25%) without the consent of the CM@Risk, as provided in Texas Local Government Code Sec. 252.048. After the Change Order is submitted by the CM@Risk under this Section 7.2, the additional time required to obtain City Council approval shall not be factored into any past or future claim for delays or calculated as a part of the Change Order request.

Section 7.3 Construction Change Directives

- a. A Construction Change Directive is a written order prepared by the Design Professional and signed by the City and Design Professional, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price or Contract Time, or both. The City may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Price and Contract Time being adjusted accordingly.
- b. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- c. If the Construction Change Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:
 - .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
 - .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed fee; or
 - .4 As provided in Section 7.3.d.
- d. If the CM@Risk does not respond promptly or disagrees with the method for adjustment in the Contract Price, the Design Professional shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Price, an amount for overhead and profit calculated using the sum of the actual costs allowed in Sections 7.3.d.1 through 7.3.d.5, and using the percentages as

set forth in Section 7.3.1 below. In such case, and also under Section 7.3.c, the CM@Risk shall keep and present, in such form as the Design Professional may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.d shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Design Professional;
 - .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
 - .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the CM@Risk or others;
 - .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
 - .5 Additional, verifiable payroll and subsistence costs incurred by the CM@Risk, Subcontractor, and Sub-subcontractor of field personnel directly attributable to the change.
- e. If the CM@Risk disagrees with the adjustment in the Contract Time, the CM@Risk may make a Claim in accordance with applicable provisions of Article 15.
 - f. Upon receipt of a Construction Change Directive, the CM@Risk shall promptly proceed with the change in the Work involved and advise the Design Professional of the CM@Risk's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Price or Contract Time.
 - g. A Construction Change Directive signed by the CM@Risk indicates the CM@Risk's agreement therewith, including adjustment in Contract Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
 - h. The amount of credit to be allowed by the CM@Risk to the City for a deletion or change that results in a net decrease in the Contract Price shall be actual net cost as confirmed by the Design Professional. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
 - i. Pending final determination of the total cost of a Construction Change Directive to the City, the CM@Risk may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Design Professional will make an interim recommendation for purposes of monthly certification for payment for those costs and certify for payment the amount that the Design Professional recommends, in the Design Professional's professional judgment, to be reasonably justified. The Design Professional's interim recommendation of cost shall adjust the Contract Price on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.
 - j. When the City and CM@Risk agree with a recommendation made by the Design Professional concerning the adjustments in the Contract Price and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Design Professional will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

- k. If the City and CM@Risk do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Design Professional for determination. The Design Professional may consult with the City in connection with such determination either at the direction of the City or at the Design Professional's discretion. If the CM@Risk does not ultimately agree with the Design Professional's determination, the CM@Risk may assert a Claim in accordance with Article 15.
- l. In Subparagraph 7.3.d, the allowance for the combined total of onsite and offsite overhead and profit included in the total cost to the City shall be based on the following schedule:
 - .1 For the CM@Risk, for Work performed by the CM@Risk's own forces, fee percentage of the Cost of Work stated in Section 5.1.a of the Agreement plus actual direct jobsite costs associated with the additional work, if any;
 - .2 For the CM@Risk, for Work performed by the CM@Risk's Subcontractor, fee percentage of the Cost of Work stated in the Agreement, if any, plus actual direct jobsite costs associated with the additional work, if any;
 - .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor's own forces, ten percent (10%) of the cost;
 - .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;
 - .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.d;
 - .6 Under no circumstance shall costs of the CM@Risk's supervisory, management, administrative or other office personnel, regardless of where stationed, be paid as cost of the Work under 7.3.d Conversely, the CM@Risk shall be compensated for their labor within the overhead and profit percentage specified in this Section 7.3.1;
 - .7 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can immediately be seen by inspection, shall be accomplished by a complete itemization of costs including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also;
 - .8 When both additions and credits are involved in any change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any; and
 - .9 Overtime, when specifically authorized by the City and not as a requirement for the CM@Risk to fulfill its obligations under this Agreement, shall be paid for by the City on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the City for overtime.

Section 7.4 Minor Changes in the Work

The Design Professional may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Price or an extension of the

Contract Time. The Design Professional's order for minor changes shall be in writing. If the CM@Risk believes that the proposed minor change in the Work will affect the Contract Price or Contract Time, the CM@Risk shall notify the Design Professional and shall not proceed to implement the change in the Work. If the CM@Risk performs the Work set forth in the Design Professional's order for a minor change without prior notice to the Design Professional that such change will affect the Contract Price or Contract Time, the CM@Risk waives any adjustment to the Contract Price or extension of the Contract Time.

Section 7.5 Supporting Information

Notwithstanding the above, requests for an adjustment in the Contract Price or adjustment in the Contract Time shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the City and Design Professional. The CM@Risk shall also comply with all provisions of Articles 8 and 15 with respect to Claims. The required information shall be provided by the CM@Risk in less than twenty-one (21) days from the CM@Risk's request for an adjustment in the Contract Price or Contract Time. Failure to timely provide this information in the proper form may be, in and of itself, grounds for rejection of the request, at the sole discretion of the City or Design Professional.

Article 8. TIME

Section 8.1 Definitions

- a. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- b. The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the CM@Risk or of persons or entities for whom the CM@Risk is responsible.
- c. The date of Substantial Completion is the date certified by the Design Professional in accordance with Section 9.8.
- d. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

Section 8.2 Progress and Completion

- a. Time limits stated in the Contract Documents are of the essence. By executing the Agreement, the CM@Risk confirms that the Contract Time is a reasonable period for performing the Work.
- b. The CM@Risk shall not knowingly, except by agreement or instruction of the City in writing, prematurely commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 10 of the Agreement to be furnished by the CM@Risk and City. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a Notice to Proceed given by the City, the CM@Risk shall notify the City in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of any additional necessary documents.
- c. Attention is directed to the fact that the Work is urgently needed by the City; for this reason it shall be agreed that the CM@Risk will substantially complete all Work under the Contract within the time established in the Contract Documents and the most recently approved CM@Risk's Project Schedule. The CM@Risk shall begin the Work on the date of commencement as defined

in the Contract Documents; carry the Work forward with adequate resources; furnish, without limitation such labor, supervision, materials, facilities, and equipment; and work such hours, including night shifts, overtime operations, and Sundays and/or holidays, as may be necessary to ensure the progress and completion of both the Work and the Project as reflected by the most recently approved CM@Risk's Project Schedule.

- d. The CM@Risk shall achieve specific Contractual Milestone dates (if any), Substantial Completion, and Final Completion within the times stated in the Contract Documents, and such dates shall be adhered to and shall be the last acceptable dates for completion of Work required for those milestones and completions, unless and until modified by the City in writing.
- e. The CM@Risk understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Contractual Milestones (if any), Substantial Completion, and Final Completion, may be met by the both the CM@Risk as well as the respective Separate Contractors.
- f. The CM@Risk shall also complete the Work in all of its details for final acceptance as expeditiously as possible after Substantial Completion.
- g. The CM@Risk shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

Section 8.3 Delays and Extensions of Time

- a. If the CM@Risk is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the City or Design Professional, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, implementation of Federal law or policies, unusual delay in transportation, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.f.ii, or other causes beyond the CM@Risk's control; (4) by delay authorized by the City pending mediation; or (5) by other causes that the Design Professional recommends may, justify delay, then the Contract Time may be extended for such reasonable time as the City may determine.
- b. Claims relating to time shall be made in accordance with applicable provisions of Article 15.
- c. This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.
- d. Any claims for extension of time shall be made in writing to the City and Design Professional not more than ten (10) days after commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The CM@Risk shall provide an estimate of the probable effect of such delay on the progress of work within five (5) days of the first date the CM@Risk should reasonably be expected to have calculated the impact of such delay, but in no event more than fifteen (15) days after the commencement of the delay, with weekly updates to the impact if the delay is of an ongoing nature.
- e. Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at <http://gis.ncdc.noaa.gov/website/ims-cdo/sod/viewer.htm> or other data as mutually agreed by the City and CM@Risk for the Project area.
- f. In allowing delays for weather, the City will be entitled to consider weather conditions prevailing throughout the entire Contract period. The City and CM@Risk will together reconcile actual

working days lost and gained over the entire Contract period every ninety (90) days. The CM@Risk shall then adjust the schedule activities accordingly for both the CM@Risk's weather float reserves and City's float reserves where those activities are carried in the CM@Risk's Project Schedule (if any). Extensions of time due to weather or other allowable reasons will be granted on the basis of one-and-four-tenths (1.4) calendar days credit for every working day lost, with each separate extension figured to the nearest whole calendar day.

- g. The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current CM@Risk's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions.

Section 8.4 CM@Risk's Obligations After Delay

- a. If either the Work actually in place falls behind as reflected by the currently updated Master Project Schedule or CM@Risk's Construction Schedule, or it becomes apparent or likely in the reasonable opinion of the City after consultation with the Design Professional that the Work will not be completed within the Contract Time or in accordance with the CM@Risk's Construction Schedule, due to delays caused by the CM@Risk or its subcontractors, the CM@Risk agrees it shall, as necessary, take some or all of the following actions (hereinafter referred to collectively as "Extraordinary Measures") at no additional cost to the City or Design Professional, as required to substantially eliminate, in the judgment of the City, the backlog of CM@Risk's Work on the Project:
 - .1 Increase quantities of, without limitation, labor, supervision, material deliveries, equipment on Site, and crafts as necessary;
 - .2 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing;
 - .3 Reschedule activities to achieve maximum practical concurrence of accomplishment; and
 - .4 Do whatever else is reasonably required by the City or Design Professional.
- b. These Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The City's right to require Extraordinary Measures is solely for the purpose of ensuring the CM@Risk's compliance with the CM@Risk's Construction Schedule.
- c. In the event of a delay, the City Design Professional may also require the CM@Risk to immediately submit a Proposed Recovery Schedule. If the Proposed Recovery Schedule is not satisfactory, the Design Professional may unilaterally establish a new Proposed Recovery Schedule acceptable to the City; issue it as a Construction Change Directive; and the CM@Risk shall comply therewith. The City may also require the CM@Risk to take any of the Extraordinary Measures to make up the lag in scheduled progress, all without additional cost to the City, or Design Professional.
- d. Failure of the CM@Risk to substantially comply with the requirements of this Section 8.4 shall be considered grounds for a determination by the City, after consultation with the Design Professional, that the Contactor is in breach of this Agreement by failing to prosecute the Work

and that of the Project so as to ensure its completion within both the Contract Time and the updated CM@Risk's Construction Schedule.

- e. Likewise, in the event the progress of the Project falls behind the predictions of the Master Project Schedule through no fault of the CM@Risk, the City or Design Professional may request, and the CM@Risk may agree to take one or more of the Extraordinary Measures, with the City bearing the cost for such measures by Change Order.
- f. The CM@Risk shall not be entitled to an adjustment in the Contract Price in connection with Extraordinary Measures required by the City under or pursuant to this Section 8.4, except as specifically noted otherwise in Section 8.4.e.

Section 8.5 City's Rights After Delay

- a. In the event that any CM@Risk fails, or appears likely to fail, to complete a critical portion of Work on time or to complete a Contractual Milestone Date or completion date as evidenced by the most recently approved CM@Risk's Project Schedule, the City or the Design Professional shall have the right to impose any or all of the following options:
 - .1 Require the CM@Risk to substantiate the capability to get back on schedule within ten (10) business days;
 - .2 Require the CM@Risk to take some or all of the Extraordinary Measures, and do whatever else is required by the City or Design Professional until CM@Risk confirms, to the satisfaction of the City and Design Professional, the progress of the Work is in compliance and congruence with the most recently approved CM@Risk's Construction Schedule, such measures being at no extra cost to City and Design Professional;
 - .3 Withhold progress payment, or portions thereof, until such time as the CM@Risk is in compliance with the most recently approved CM@Risk's Project Schedule; and
 - .4 Contact or visit the factory, plant or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work, and expedite same, at CM@Risk's expense.

Section 8.6 Liquidated Damages

- a. Omitted.
- b. Omitted.
- c. Omitted.
- d. Permitting the CM@Risk to continue and finish the Work, or any portion thereof, after the time fixed for its completion, shall in no way operate as a waiver on the part of the City of any of its rights under the Contract. The CM@Risk acknowledges the City receives no benefits from early completion of the Project or the Work, therefore all rights, if any, to an early completion bonus or other increases in the Contract Price for such early completion are hereby waived by the CM@Risk.

Article 9. PAYMENTS AND COMPLETION

Section 9.1 Contract Price

- a. The Contract Price is stated in the Agreement and, is the maximum amount payable by the City to the CM@Risk for performance of the Work under the Contract Documents. The Contract Price may only be increased pursuant to a Change Order signed by the City. Completion of the Work is a condition precedent to City's obligation to pay the full Contract Price.
- b. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the City or CM@Risk, the applicable unit prices shall be equitably adjusted.

Section 9.2 Schedule of Values

Where the Contract is based on a Stipulated Sum or the Cost of the Work, the CM@Risk shall meet with the Design Professional, at the Preconstruction Conference with a proposed Schedule of Values. The CM@Risk's Schedule of Values will be reviewed by the City and Design Professional in the context of the CM@Risk's proposed Construction Management Plan, including, but not limited to, the CM@Risk's Construction Schedule therein. The values assigned to each work activity in the Schedule of Values should be generated by the projected earned value of the activities in the CM@Risk's Construction Schedule, rounded to the nearest five dollars, and equal in aggregate to the CM@Risk's and Subcontractor's contract amount(s). The Schedule of Values shall allocate the entire Contract Price to the various portions of the Work and be prepared in such form and supported by such additional data to substantiate its accuracy as the City and Design Professional may require. This Schedule of Values, unless objected to by the City or Design Professional, shall be used as a basis for reviewing the CM@Risk's Applications for Payment.

Section 9.3 Applications for Payment

- a. At least ten days before the date established for each progress payment, the CM@Risk shall submit to the Design Professional an itemized "Application for Payment" prepared in accordance with the Schedule of Values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the CM@Risk's right to payment that the City or Design Professional require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers and shall reflect retainage if provided for in the Contract Documents. The Application for Payment shall be notarized and include other documentation as reasonably required by the City; submitted electronically.
 - i. As provided in Section 7.3.i, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim recommendations of the Design Professional, but not yet included in Change Orders.
 - ii. Applications for Payment shall not include requests for payment for portions of the Work for which the CM@Risk does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the CM@Risk intends to pay.
 - iii. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the City and Design Professional and in compliance with all applicable statutes:

.1 A duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the CM@Risk has entered into subcontracts, the amount of each such subcontract, the invoice from and the amount requested for any Subcontractor and material supplier in the requested Application for Payment, and the amount to be paid to the CM@Risk from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers;

.2 Duly executed statutory conditional waivers of mechanics' and material suppliers' lien for progress payments with teach payment application; and appropriate statutory unconditional waivers of mechanics' and material suppliers' liens for progress payments; and appropriate statutory unconditional waivers for final payments from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors establishing payment or satisfaction of payment of all amounts requested by the CM@Risk on behalf of such entities or persons in any previous Application for Payment;

.3 An updated CM@Risk's Construction Schedule per Section 4.4 of the Agreement clearly showing the actual progress of the Work for each activity against the Work previously scheduled to be completed during the period, and against targeted activities' previously approved completion dates; and

.4 With every Application for Payment, CM@Risk will submit an affidavit stating that the CM@Risk has complied with the requirements of Chapter 2258, Texas Government Code. The parties hereto agree that any electronic copy of such affidavit shall be treated as an original for all intents and purposes;

.4 If required by the City's title insurer, if any, the CM@Risk shall execute a personal gap undertaking in form and substance satisfactory to such title insurer; and.

.5 Notwithstanding the above, Applications for Payment shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Design Professional, and shall include, at a minimum, an updated monthly CM@Risk's Construction Schedule clearly and graphically comparing the actual "work-in-place" completed to the Work previously projected to be complete for the period. Failure to provide this information in the proper form may be, in and of itself, grounds for rejection of the Application for Payment, at the discretion of the Design Professional.

- b. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. If approved in advance by the City, payment may similarly be made for materials and equipment suitably stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by the CM@Risk with procedures satisfactory to the City to establish the stored materials and equipment which must be properly tagged as to material and job identification; must be available for inspection by the Design Professional; and such requests for payment must be accompanied by documentary evidence, which supports the request's validity; quantity and value of materials; proper material acceptance and storage; and including insurance on the materials as evidenced by a Certificate of

Insurance or otherwise protects the City's interests. Such request shall include the costs of applicable insurance, storage, and transportation to the Site, for such materials and equipment stored off the Site. Such materials shall be:

- .1 Protected from diversion, destruction, theft, and damage to the satisfaction of the City;
 - .2 Specifically marked for use on the Project; and
 - .3 Segregated from other materials at the storage facility.
- c. The CM@Risk warrants that title to all Work covered by an Application for Payment will pass to the City either by incorporation in the construction or upon the receipt of payment by the CM@Risk, whichever occurs first. The CM@Risk further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the City shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the CM@Risk, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.
- d. **THE CM@RISK FURTHER EXPRESSLY UNDERTAKES TO DEFEND THE INDEMNITEES, AT THE CM@RISK'S SOLE EXPENSE, AGAINST ANY ACTIONS, LAWSUITS, OR PROCEEDINGS BROUGHT AGAINST THE INDEMNITEES AS A RESULT OF LIENS OR VERIFIED CLAIMS FILED AGAINST THE WORK, THE SITE OF ANY OF THE WORK, THE PROJECT SITE AND ANY IMPROVEMENTS THEREON, PAYMENTS DUE THE CM@RISK, THE PROJECT BOND OR ANY PORTION OF THE PROPERTY OF ANY OF THE INDEMNITEES (REFERRED TO COLLECTIVELY AS "LIENS OR VERIFIED CLAIMS" IN THIS SECTION 9.3.d). THE CM@RISK HEREBY AGREES TO INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH LIENS OR VERIFIED CLAIMS AND AGREES TO PAY ANY JUDGMENT OR LIENS OR VERIFIED CLAIMS RESULTING FROM ANY SUCH ACTIONS, LAWSUITS, OR PROCEEDINGS.**

Section 9.4 Certificates for Payment

- a. The Design Professional will, within seven (7) days after receipt of the CM@Risk's Application for Payment, either (1) issue to the City a "Certificate for Payment" in the full amount of the Application for Payment, with a copy to the CM@Risk; or (2) issue to the City a Certificate for Payment for such amount as the Design Professional recommends is properly due, and notify the CM@Risk and City of the Design Professional's reasons for withholding certification in part as provided in Section 9.5.a; or (3) withhold certification of the entire Application for Payment, and notify the CM@Risk and City of the Design Professional's reason for withholding certification in whole as provided in Section 9.5.a.
- b. The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the City, based on the Design Professional's evaluation of the Work and the data in the Application for Payment, that, to the best of the Design Professional's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the CM@Risk is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to

completion, and to specific qualifications expressed by the Design Professional. However, the issuance of a Certificate for Payment will not be a representation that the Design Professional has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the City to substantiate the CM@Risk's right to payment; or (4) made examination to ascertain how or for what purpose the CM@Risk has used money previously paid on account of the Contract Price.

- c. Certification will be issued for ninety-five percent (95%) of the amount requested by the CM@Risk and approved by the Design Professional to be properly due until the CM@Risk is ninety-five percent (95%) completed with the Work. Thereafter, the accumulated retainage may be held without additional retainage, except that, should the CM@Risk at any time fail to keep current with the approved progress schedule, fail to assure payment to Subcontractors, Sub-subcontractors and suppliers as required hereunder; or fail to promptly and diligently correct Work that does not comply with the Contract Documents, certification of ninety-five percent (95%) shall automatically again become effective and shall apply as long as the CM@Risk lags behind such progress or fails to assure such payment.

Section 9.5 Decisions to Withhold Certification

- a. The Design Professional may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the City, if in the Design Professional's opinion the representations to the City required by Section 9.4.b cannot be made. If the Design Professional is unable to certify payment in the amount of the Application for Payment, the Design Professional will notify the CM@Risk and City as provided in Section 9.4.a. If the CM@Risk and Design Professional cannot agree on a revised amount, the Design Professional will promptly issue a Certificate for Payment for the amount for which the Design Professional is able to make such representations to the City. The Design Professional may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Design Professional's opinion to protect the City from loss for which the CM@Risk is responsible, including loss resulting from acts and omissions described in Section 3.3.b, because of any of the following:
 - .1 defective Work not remedied;
 - .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the City is provided by the CM@Risk;
 - .3 failure of the CM@Risk to make payments properly to Subcontractors, Sub-subcontractors and suppliers or for labor, materials or equipment;
 - .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
 - .5 damage to the City or a Separate Contractor;
 - .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
 - .8 CM@Risk's failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws;
 - .9 failure to fully execute the Contract with all associated documents as required;
 - .10 bond claims, or liens, filed for any portion of the Work; or
 - .11 failure of the CM@Risk to comply with any provisions of the Contract Documents, including without limitation Section 8.4.
- b. Omitted.
 - c. When the reasons for withholding certification are removed, certification will be made for amounts previously withheld less all associated damages, costs and expenses, suffered or accrued by the City or Design Professional. In the event the Design Professional nullifies a previously issued Project Certificate for Payment, and the City has, prior to such nullification, paid thereon, the CM@Risk shall promptly reimburse to the City amounts the latter had previously paid pursuant to the nullified project Certificate for Payment. Alternately, the City may withhold payment in any subsequent Application for Payment, until and unless the reasons for nullification of the previously issued project Certificate for Payment have been remedied and all associated damages, costs, and expenses of City and Design Professional have been paid by the CM@Risk.
 - d. If the Design Professional withholds certification for payment under Section 9.5.a.3, the City may, at its sole option, issue joint checks to the CM@Risk and to any Subcontractor or supplier to whom the CM@Risk failed to make payment for Work properly performed or material or equipment suitably delivered. If the City makes payments by joint check, the City shall notify the Design Professional and the CM@Risk shall reflect such payment on its next Application for Payment.
 - e. The CM@Risk shall not stop work or terminate the Contract if the Design Professional should refuse to issue any certificate because the Application for Payment does not conform with the requirements of Sections 9.3, 9.4, 9.5 or any other portion of these General Conditions, as supplemented herein.

Section 9.6 Progress Payments

- a. After the Design Professional has issued a Certificate for Payment, the City shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Design Professional.
- b. The CM@Risk shall pay each Subcontractor, Sub-subcontractor and supplier, no later than ten (10) days after receipt of payment from the City the amount to which the Subcontractor, Sub-subcontractor and supplier is entitled, reflecting percentages actually retained from payments to the CM@Risk on account of the Subcontractor's, Sub-subcontractor's and supplier's portion of the Work, unless otherwise allowed by the provisions of the subcontract or by law. The CM@Risk shall notify City in advance and in writing of any payment(s) to be withheld from any Subcontractor. The CM@Risk shall, by appropriate agreement with each Subcontractor, Sub-subcontractor and supplier, require each to make payments to their Sub-subcontractors and suppliers in a similar manner.

- c. The Design Professional will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the CM@Risk and action taken thereon by the Design Professional and City on account of portions of the Work done by such Subcontractor.
- d. The City has the right to request written evidence from the CM@Risk that the CM@Risk has properly paid Subcontractors and suppliers amounts paid by the City to the CM@Risk for subcontracted Work. If the CM@Risk fails to furnish such evidence within seven (7) days, the City shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the City nor Design Professional shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.
- e. The CM@Risk's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.b, 9.6.c and 9.6.d.
- f. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of any Work.
- g. The CM@Risk shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the City unless allowed by the terms and conditions of the subcontract as stated in the Contract Documents or by law. The CM@Risk shall notify City in advance and in writing of any payment(s) to be withheld from any Subcontractor. Sums withheld by the City from the CM@Risk for deficiencies solely attributable to the CM@Risk shall not be grounds for the CM@Risk to withhold sums due to any Subcontractor. All sums paid to the CM@Risk for labor, materials, or equipment for the Work or Project shall be considered trust funds to be used by the CM@Risk for payment to those persons to the extent providing labor, materials and/or equipment incorporated into the Work or Project. Payments received by the CM@Risk for Work properly performed by Subcontractors and suppliers shall be held by the CM@Risk for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the CM@Risk for which payment was made by the City. However, notwithstanding the above, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the CM@Risk, shall create any fiduciary liability or tort liability on the part of the CM@Risk for breach of trust or shall entitle any person or entity to an award of punitive damages against the CM@Risk for breach of the requirements of this provision.
- h. **PROVIDED THE CITY HAS FULFILLED ITS PAYMENT OBLIGATIONS UNDER THE CONTRACT DOCUMENTS, THE CM@RISK SHALL DEFEND AND INDEMNIFY THE CITY FROM ALL LOSS, LIABILITY, DAMAGE OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES AND LITIGATION EXPENSES, ARISING OUT OF ANY LIEN CLAIM OR OTHER CLAIM FOR PAYMENT BY ANY SUBCONTRACTOR OR SUPPLIER OF ANY TIER. UPON RECEIPT OF NOTICE OF A LIEN CLAIM OR OTHER CLAIM FOR PAYMENT, THE CITY SHALL NOTIFY THE CM@RISK. IF APPROVED BY THE APPLICABLE COURT, WHEN REQUIRED, THE CM@RISK MAY SUBSTITUTE A SURETY BOND FOR THE PROPERTY AGAINST WHICH THE LIEN OR OTHER CLAIM FOR PAYMENT HAS BEEN ASSERTED.**

- i. To the extent CM@Risk has received payment in accordance with the terms of this Agreement, the CM@Risk agrees to keep the Work and the Site of the Project and all project bonds free and clear of all bond claim and verified claims related to labor and materials furnished in connection with the Work.
- j. If the City is entitled to reimbursement or payment from the CM@Risk under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the City. Notwithstanding anything contained in the Contract Documents to the contrary, if the CM@Risk fails to promptly make any payment due the City, or if the City incurs any costs and expenses to cure any default of the CM@Risk or to correct defective Work, the City shall have an absolute right to offset such amount against the Contract Price and may, at the City's sole discretion, elect either to (i) deduct an amount equal to that which the City is entitled from any payment then or thereafter due the CM@Risk from the City, or (ii) issue a written notice to the CM@Risk reducing the Contract Price by an amount equal to that which the City is entitled.

Section 9.7 Failure of Payment

If the Design Professional does not issue a Certificate for Payment, through no fault of the CM@Risk, within seven (7) days after receipt of the CM@Risk's Application for Payment, or if the City does not pay the CM@Risk within the date established in the Contract Documents, the amount certified by the Design Professional, then the CM@Risk may, upon seven (7) additional days' written notice to the City and Design Professional, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Price shall be increased by the amount of the CM@Risk's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

Section 9.8 Substantial Completion

- a. "Substantial Completion" is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work for its intended use, all major systems are operational, and all safety features are completed and City's receipt of written confirmation after final inspections by the applicable electrical, plumbing, fire department, health department, and other local and state officials having jurisdiction, stating the project is ready for occupancy by the City. In addition to the other requirements of the Contract Documents, and without limitation, the CM@Risk must also have obtained the written approval and issuance of any occupancy permits required by the laws of local government(s) and the State of Texas before the CM@Risk shall be deemed to have achieved Substantial Completion.
- b. When the CM@Risk considers that the Work, or a portion thereof which the City agrees to accept separately, is substantially complete, the CM@Risk shall prepare and submit to the Design Professional a comprehensive list of items to be completed or corrected prior to final payment. The CM@Risk shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CM@Risk to complete all Work in accordance with the Contract Documents. The CM@Risk will also provide the Design Professional a comprehensive list of all claims previously and properly made in writing and identified by the CM@Risk as unsettled at the time of Substantial Completion.

- c. Upon receipt of the CM@Risk's list, the Design Professional will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design Professional's inspection discloses any item, whether or not included on the CM@Risk's list, which is not sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work or designated portion thereof for its intended use, the CM@Risk shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Design Professional. In such case, the CM@Risk shall then submit a request for another inspection by the Design Professional to determine Substantial Completion.
- d. When the Work or designated portion thereof is substantially complete, the Design Professional will prepare a "Certificate of Substantial Completion" that shall establish the date of Substantial Completion; establish responsibilities of the City and CM@Risk for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the CM@Risk shall finish all items on the list accompanying the Certificate of Substantial Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- e. The Certificate of Substantial Completion shall be submitted to the City and CM@Risk for their written acceptance of responsibilities assigned to them in the Certificate of Substantial Completion. Upon such acceptance, the City shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.
- f. The CM@Risk's acceptance of payment per Section 9.8.e shall constitute a waiver for all purposes of all claims or causes of action by the CM@Risk against the City and the Design Professional, except those previously and properly made in writing and identified in the list provided by the CM@Risk as unsettled at the time of Substantial Completion per Sections 9.8.b.

Section 9.9 Partial Occupancy or Use

- a. The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the CM@Risk, as such occupancy or use is consented to by the insurer, if required, provided it is authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and CM@Risk have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the CM@Risk considers a portion substantially complete, the CM@Risk shall prepare and submit a list to the Design Professional as provided under Section 9.8.b. Consent of the CM@Risk to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the City and CM@Risk or, if no agreement is reached, by decision of the City.
- b. Immediately prior to such partial occupancy or use, the City, CM@Risk, and Design Professional shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

- c. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

Section 9.10 Final Completion and Final Payment

- a. Upon receipt of the CM@Risk's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Professional will promptly make such inspection. When the Design Professional finds the Work acceptable under the Contract Documents and the Contract fully performed, the Design Professional will promptly issue a final Certificate for Payment stating that the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the CM@Risk and noted in the final Certificate for Payment is due and payable. The Design Professional's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.b as precedent to the CM@Risk's being entitled to final payment have been fulfilled. All warranties and guarantees required under Exhibit V to the Agreement or otherwise required pursuant to the Contract Documents shall be assembled and delivered by the CM@Risk to the Design Professional as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Design Professional until all warranties and guarantees have been received and accepted by the City. "Final Completion" occurs when all the conditions of this Section and the Contract Documents are met as set forth herein.
- b. Neither final payment nor any remaining retained percentage shall become due until the CM@Risk submits to the Design Professional and City; (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City or City's property might be responsible or encumbered (less amounts withheld by the City) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect; (3) a written statement satisfactory to the City that the insurance will cover the period required by the Contract Documents; (4) consent of surety to final payment; (5) if required by the City, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City; (6) certification by the CM@Risk that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the CM@Risk against the City arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the As Builts maintained by the CM@Risk pursuant to the Contract Documents and delivered to the City or Design Professional are complete and accurate in all respects; and (7) evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including, but not limited to, (i) instruction of the City's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the City with keying schedule (master, submaster, and special keys); (iii) delivery to the City of the CM@Risk's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Design Professional's

review and delivery to the City; (iv) delivery to the City of printed operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the City of the As Builts; (vi) delivery to the City of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the City of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the CM@Risk. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the City before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the City, the CM@Risk may furnish a bond satisfactory to the City to indemnify the City against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the CM@Risk shall refund to the City all money that the City may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and attorneys' fees.

- i. In addition to items listed in 9.10.b to be submitted before final payment will be made or remaining retainage released, CM@Risk shall deliver a permanent certificate of occupancy from local authorities having jurisdiction.
- c. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the CM@Risk or by issuance of Change Orders affecting final completion, and the Design Professional so confirms, the City shall, upon application by the CM@Risk and certification by the Design Professional, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CM@Risk to the Design Professional prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.
- d. The making of final payment shall constitute a waiver of Claims by the City except those arising from
 - .1 bond claims, Claims, liquidated damages, security interests, or encumbrances arising out of the Contract and unsettled;
 - .2 failure of the Work to comply with the requirements of the Contract Documents;
 - .3 terms of special warranties required by the Contract Documents;
 - .4 audits performed by the City, if permitted by the Contract Documents, after final payment; or
 - .5 gross negligence, willful misconduct, or fraudulent concealment in connection with the performance of the Contract.
- e. Application for and acceptance of final payment by the CM@Risk, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee against the City or Design Professional except

those previously made in writing and identified by that payee arising after the waiver given at Substantial Completion payment described in Sections 9.8.b and 9.8.f.

- f. In addition to any other damages, failure of the CM@Risk to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the CM@Risk being responsible for excess Design Professional's and other City's consultant(s)' fees beyond their original scope of services required to achieve final completion ("Excess Fees"). Excess Fees will be deducted from the amount due the CM@Risk.

Article 10. PROTECTION OF PERSONS AND PROPERTY

Section 10.1 Safety Precautions and Programs

The CM@Risk shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. CM@Risk's and all Subcontractors' Safety Programs shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970, and all other applicable state, local, or federal laws or regulations.

Section 10.2 Safety of Persons and Property

- a. The CM@Risk shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to all of the following:
 - .1 employees on the Work and other persons who may be affected thereby;
 - .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of the CM@Risk, a Subcontractor, or a Sub-subcontractor; and
 - .3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- b. The CM@Risk shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.
- c. The CM@Risk shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The CM@Risk shall also be responsible, at the CM@Risk's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the CM@Risk.
- d. When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the CM@Risk shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and the CM@Risk shall give the City and the Design Professional reasonable advance written notice of such planned activities.
- e. The CM@Risk shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.a.2 and 10.2.a.3 caused in whole or in part by the CM@Risk, a Subcontractor, a Sub-

subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the CM@Risk is responsible under Sections 10.2.a.2 and 10.2.a.3. The CM@Risk may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the City or Design Professional or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the CM@Risk. The foregoing obligations of the CM@Risk are in addition to the CM@Risk's obligations under Article 11 of the Contract.

- f. The CM@Risk shall designate a responsible member of the CM@Risk's organization at the Site whose duty shall be the prevention of accidents. This person shall be the CM@Risk's superintendent unless otherwise designated by the CM@Risk in writing to the City and Design Professional.
- g. The CM@Risk shall not permit any part of the construction or Site to be loaded so as to cause damage or create an unsafe condition.
- h. Injury or Damage to Person or Property
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.
- i. The CM@Risk shall immediately report in writing to the City and Design Professional all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately electronically, as well as by telephone or messenger to the City and the Design Professional.

Section 10.3 Hazardous Materials and Substances

- a. Hazardous materials include any material in such quantity, concentration, and physical or chemical characteristics including, but not limited to, ignitability or toxicity, so as to be capable of posing an unreasonable risk to health, safety and/or property if released into the atmosphere, transported, stored, or disposed of. The CM@Risk is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the CM@Risk encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the Site by the CM@Risk, the CM@Risk shall, upon recognizing the condition, immediately stop Work in the affected area and notify the City and Design Professional of the condition in writing.

.1 For the purposes of this section, the following terms have the below meanings (however, each definition should be read as broadly as possible to incorporate similar hazardous materials or substances:

Asbestos: any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

Petroleum: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

Hazardous Waste: any solid waste listed as hazardous or which possesses one or more hazardous characteristics.

- b. Upon receipt of the CM@Risk's written notice, the City shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the CM@Risk and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the City shall furnish in writing to the CM@Risk and Design Professional the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The CM@Risk and the Design Professional will promptly reply to the City in writing stating whether or not either has reasonable objection to the persons or entities proposed by the City. If either the CM@Risk or Design Professional has an objection to a person or entity proposed by the City, the City shall propose another to whom the CM@Risk and the Design Professional have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the City and CM@Risk. By Change Order duly processed and approved, the Contract Time shall be extended appropriately, and the Contract Price shall be increased by the amount of the CM@Risk's reasonable additional costs of shutdown, delay, and start-up, both as specified in Article 7. The term "rendered harmless" shall be interpreted to mean, without limitation that levels of hazardous materials, including, but not limited to, asbestos and polychlorinated biphenyls, are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the City have any responsibility for any substance or material that is brought to the Project Site by the CM@Risk, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The CM@Risk agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.
- c. Omitted.
- d. The City shall not be responsible under this Section 10.3 for hazardous materials or substances the CM@Risk brings to the Site unless such materials or substances are required by the Contract Documents. The City shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the CM@Risk's fault or negligence in the use and handling of such materials or substances.
- e. Omitted.
- f. **THE CM@RISK SHALL INDEMNIFY THE CITY FOR THE COST AND EXPENSE THE CITY INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CM@RISK BRINGS TO THE SITE AND NEGLIGENTLY HANDLES, OR (2) WHERE THE CM@RISK FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.a, EXCEPT TO THE EXTENT THAT THE COST AND EXPENSE ARE DUE TO THE CITY'S FAULT OR NEGLIGENCE.**

Section 10.4 Emergencies

In an emergency affecting safety of persons or property, the CM@Risk shall act, at the CM@Risk's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the CM@Risk on account of an emergency shall be determined as provided in Article 15 and Article 7.

Section 10.5 Site Visits

Anyone other than the City's designated representatives, the Design Professional, the Design Professional's consultants, and the City's other consultants visiting the job site who is not employed by a CM@Risk shall be required to register with the CM@Risk's site office before proceeding onto the job site.

Article 11. Omitted.

Article 12. UNCOVERING AND CORRECTION OF WORK

Section 12.1 Uncovering of Work

- a. If a portion of the Work is covered contrary to the Design Professional's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Design Professional, be uncovered for the Design Professional's examination and be replaced at the CM@Risk's expense without change in the Contract Time.
- b. If a portion of the Work has been covered that the Design Professional has not specifically requested to examine prior to its being covered, the Design Professional may request to see such Work and it shall be uncovered by the CM@Risk. If such Work is in accordance with the Contract Documents, the CM@Risk shall be entitled to an equitable adjustment to the Contract Price and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the CM@Risk's expense.

Section 12.2 Correction of Work

- a. Before Substantial Completion
The CM@Risk shall promptly correct Work rejected by the Design Professional or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, specifically including but not limited to additional testing and inspections, the cost of uncovering and replacement; the cost of any additional supervision, material, labor, equipment, rental charges, home office overhead, and other expenditures necessitated to both rectify the non-complying conditions, protect adjacent Work of both the CM@Risk and the Project, and restore Work by the CM@Risk and others necessarily damaged in the course of rectifying the non-complying conditions; as well as compensation for the Design Professional's services and expenses made necessary thereby, shall be at the CM@Risk's expense.

specific obligation of the CM@Risk to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CM@Risk's liability with respect to the CM@Risk's obligations other than specifically to correct the Work.

- f. The CM@Risk's obligations under this Section 12.2 shall, without limitation, survive acceptance of the Work under the Contract and termination of the Contract.

Section 12.3 Acceptance of Nonconforming Work

If the City prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. In the event final payment has been made by the City subsequent to accepting such non-conforming Work, the CM@Risk shall pay the City for the reduction in the Contract Sum occasioned by such acceptance.

Article 13. MISCELLANEOUS PROVISIONS

Section 13.1 Omitted.

Section 13.2 Omitted.

Section 13.3 Rights and Remedies

- a. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.
- b. No action or failure to act by the City, Design Professional, or CM@Risk shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

Section 13.4 Quality Management Tests and Inspections

- a. Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the CM@Risk shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the City, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The CM@Risk shall give the Design Professional timely notice of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. The City shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The City shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require. As required by the provisions of Texas Government

Code, Section 2269.058(a), as amended, the City shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the City. To the extent that any of the provisions of this Section 13.4 or other provisions of this Agreement conflict with any of the provisions of Section 2269.058(a), as amended, such conflict is unintentional, and the provisions of the Texas Government Code shall control.

- b. If the Design Professional, City, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.a, the Design Professional will, upon written authorization from the City, instruct the CM@Risk to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the City, and the CM@Risk shall give timely notice to the Design Professional of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. Such costs, except as provided in Section 13.4.c, shall be at the City's expense.
- c. If such procedures for testing, inspection, or approval under Sections 13.4.a and 13.4.b reveal failure of the portions of the Work to comply with requirements established by the Contract Documents ("Failed Work"), all costs made necessary by the Failed Work, including those of repeated procedures and compensation for the Design Professional's services and expenses and all costs specified in Section 12.2 shall be at the CM@Risk's expense. The CM@Risk also agrees all costs of testing, inspection, and approval services required for the correction of the Failed Work and the cost of such similar services related to remedial operations performed to the Failed Work shall be borne by the CM@Risk.
- d. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the CM@Risk and promptly delivered to the Design Professional.
- e. If the Design Professional is to observe tests, inspections, or approvals required by the Contract Documents, the Design Professional will do so promptly and, where practicable, at the normal place of testing.
- f. It is the intent of the Construction Documents to require the CM@Risk to control the quality of the Work using the processes specified in the CM@Risk's Quality Management, Commissioning, and Turnover Plan contained within the most recent Construction Management Plan approved by the City and Design Professional. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work and shall conform to the most recently approved CM@Risk's Construction Schedule.
- g. The responsibility for implementing the Quality Management, Commissioning and Turnover Plan is the CM@Risk's, as is the obligation to provide the Work and a complete and functional project per the Contract Documents. Notwithstanding anything herein, or in subsequently approved Quality Management, Commissioning and Turnover Plans, the City's review and Design Professional's approval of such plan(s) does not relieve the CM@Risk in any way of this responsibility.
- h. The CM@Risk shall be in charge of scheduling; re-scheduling (when required); and confirming adequate distribution of reports and other findings from all testing and inspections of the Work. This responsibility includes, but is not limited to, scheduling the testing services of a certified testing laboratory which, by statute shall be contracted to and paid for by the City. The certified testing laboratory shall be acceptable to the Design Professional; and shall perform the tests as

called for in the Contract Documents. The conditions that apply to materials testing and inspections include, but are not limited to the following:

- .1 The frequency and type of Quality Control testing shall be established by the CM@Risk and shall be sufficient to insure the delivery of the Work and a complete and functional project per the Contract Documents. The type and amount of testing required by the Contract Documents shall be seen as the minimums required, and shall be increased, if in the opinion of the CM@Risk, more testing is needed to meet the requirements of the CM@Risk.
 - .2 The CM@Risk shall concurrently provide the Design Professional copies of all test results it receives within three (3) business days of receipt of same.
 - .3 The City shall provide such Quality Assurance testing as it and the Design Professional mutually agree to be adequate for their own needs. The City shall distribute the results of its own Quality Assurance tests as it, at its sole discretion, deems appropriate. The provision of Quality Assurance testing by the City, or lack thereof shall in no manner affect the responsibilities of the CM@Risk or Design Professional under this Agreement.
- i. The CM@Risk shall facilitate and conduct weekly (or more frequent if necessary) meetings on Site for the coordination of all mechanical, electrical and special systems installation activities and possible interference(s) above ceilings, in mechanical rooms, etc. The mechanical trades shall typically have preference in the event of conflicts, and therefore the mechanical contractor's coordinator will usually lead each meeting, unless the CM@Risk decides another trade or the CM@Risk should take the lead. The Design Professional shall be informed of the meetings at least seven (7) days in advance, and the appropriate Design Professional's consultants should be invited to attend by the CM@Risk, as supplemented and coordinated by the Design Professional.
 - j. The CM@Risk's Quality Management, Commissioning and Turnover Plan shall specify that prior to completion and acceptance of any building system or phase, consistent with the Contract and applicable codes and CM@Risk will review, in detail, the steps for completing testing of all building systems with the City and Design Professional. This plan shall be coordinated with and shall be made part of the CM@Risk's Construction Schedule. All testing shall be of each complete system, before covering, or of individually separable larger portions of each system and shall be performed in the presence of the appropriate City's and Design Professional's consultant(s), representatives of the City, and at its option, either or both the Design Professional.
 - k. When heating, air conditioning, ventilating, exhaust, or other items of mechanical, electrical or other similar equipment are installed, or other systems or equipment requiring testing as may be specified in the CM@Risk's Quality Management, Commissioning and Turnover Plan, it shall be the responsibility of the CM@Risk, Subcontractor or Sub-subcontractor installing such equipment to operate it for a period of time satisfactory to the City prior to acceptance and before the start of warranty. The duration of such operation shall be as the City, City's consultant(s), Design Professional's consultant(s), City' employees and other City's representatives (the "Turnover Team") shall reasonably require for proper testing of the respective system and thorough instruction of the City's operating personnel.
 - l. All equipment, testing instruments, instruction materials and incidentals required for proper testing of such systems and thorough instruction of the City's operating personnel on each system's operations and maintenance shall be provided by the CM@Risk, Subcontractor or Sub-

subcontractor responsible for providing and installing the equipment. Such tests and instruction shall be in meetings held solely for this purpose (the "Turnover Meetings"), which shall be coordinated and managed by the CM@Risk, who shall show their dates in the CM@Risk's Construction Schedule at least sixty (60) days prior to occurrence. The CM@Risk shall schedule the Turnover Meetings at times reasonably convenient for the City's consultant(s), Design Professional's consultant(s), City's employees and other City's representatives that the City and Design Professional agree are necessary to attend for each system. The Design Professional may attend such Turnover Meetings at its discretion.

- m. The CM@Risk shall provide a digital video record to the City, with copies to the Design Professional of all meetings for the purpose of City operational staff instruction or training; as well as commissioning of equipment. These videos will become a permanent part of all Operations and Maintenance manuals as applicable.
- n. The CM@Risk shall prepare a digital video record of the project for the City with copies to the Design Professional at such stages as shall be indicated by the Design Professional for the purpose of documenting the location of piping, conduit, equipment, or other construction to be concealed at a later date; recording key inspections and tests; providing evidence of unforeseeable conditions encountered by the CM@Risk on Site; and other construction issues as the Design Professional may reasonably require from time to time.
- o. The CM@Risk shall layout and mark any plantings, shrubs and trees which will require removal a minimum of five (5) business days prior to their removal. The CM@Risk shall notify the Design Professional in writing immediately upon completion of this marking, and the Design Professional will have the location of these marked plantings, shrubs and trees reviewed and approved (if correct) by the City. The Design Professional will then give permission for removal in writing to the CM@Risk. Plantings, shrubs, and trees shall not be removed or damaged without such permission.

Section 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest as set forth in the provisions of Texas Government Code, Chapter 2251, as amended, or its successor statute.

Section 13.6 Time Limits on Claims

The City and CM@Risk shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work.

Section 13.8 Measurement

Before ordering any material or doing any Work, the CM@Risk shall verify all measurements for Work completed at the Project and shall be responsible for their accuracy. Any differences found shall be submitted to the Design Professional for consideration before proceeding with the Work. The CM@Risk shall use its utmost efforts to identify discrepancies in dimensions in a timely fashion and notify the City and Design Professional of these prior to commencing any Work affected by the ambiguous dimensions.

No extra charge or compensation shall be allowed because of differences between actual measurements and the dimensions indicated on the Drawings.

Section 13.9 Expediting Materials

The CM@Risk shall immediately, after receipt of Notice to Proceed and approval of the list of Subcontractors and material suppliers, place orders for all equipment, materials, and supplies required for the Work, and shall submit to the Design Professional evidence that such orders have been placed in accordance with the CM@Risk's Construction Schedule.

Section 13.10 Addressing the City's Additional Needs and Concerns

- a. Notwithstanding the above, the City has a unique set of stakeholders and organizational structure that creates special challenges the CM@Risk must completely and successfully address to the satisfaction of the City and Design Professional in the performance of the Work under this Agreement. The actions that shall be taken to address these special challenges include, but are not limited to, the following:

- .1 The CM@Risk shall provide the superintendent once per month for a scheduled meeting with the City for a progress update on the project if requested by the City. A walk-through of the Site may be held as a part of this meeting, which shall be scheduled by mutual agreement during regular business hours.

- .2 The CM@Risk may be required to provide the superintendent for one meeting per month with the Design Professional for the purpose of assisting the City in preparing City Council agenda items and assisting City staff in preparing presentations to the City Council for the benefit of the public. The actual preparation and submission of the City Council of any agenda or work session item shall be performed by the City.

- .3 In addition to the meetings required to complete the Project, it is anticipated the City may request tours from time to time of the Project and the Site. The CM@Risk shall indicate in writing when such activity will be permitted and when the Site is off limits. These requirements shall be coordinated through the City.

Section 13.11 Additional Provisions

- a. In the event that any provision herein is held to be unlawful, against public policy, or a violation of the Charter or Ordinances of the Denton City, Texas, such provision shall be modified to make it valid, or if modification is not possible, such provision shall be deleted and the remainder of this Agreement shall remain in full force and effect.
- b. Each party hereto agrees to, without limitation, perform all acts; provide all services, material, equipment, labor and supervision; and to make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.
- c. All exhibits referred to in the Contract Documents are, by reference, incorporated herein for all purposes.
- d. The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of the Contract Documents.

- e. Any specific requirement in this Contract that require responsibilities or obligations of the CM@Risk also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor, Sub-subcontractor or supplier of any tier. The omission of a reference to a Subcontractor in connection with any of the CM@Risk's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor, Sub-subcontractor or supplier of any tier under the Contract Documents or the applicable subcontract.
- f. The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written document signed by City. No person is authorized on behalf of City to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the CM@Risk's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the CM@Risk shall be limited to the specific material restated in the written document signed by City and shall not relieve CM@Risk of any other of the duties and obligations under the Contract Documents.
- g. The CM@Risk shall provide and file, as required by law, all notices required or permitted by the laws of the state in which the Project is located for protection of City from liens and claims of lien if permitted or required by applicable law. CM@Risk shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.
- h. The CM@Risk shall provide City with copies of all notices received by CM@Risk from Subcontractors, Sub-subcontractors, and/or suppliers to CM@Risk.
- i. The City is a Texas home-rule municipality and as such is generally exempt from taxation under Texas law, which may include the purchase of items, materials, or supplies purchased on behalf of the City for this public works project. CM@Risk shall confirm that the City is exempt before paying taxes for items, materials, or supplies that may not be lawfully charged to the City.
- j. City affirmatively represents that its governing body has duly appropriated such sums which are equal to or in excess of the contract amount, and that such contract amount may be lawfully paid by City to CM@Risk subject to the terms and conditions of the Contract Documents. In the event that City approves a Change Order, Construction Change Directive or other additional compensable Work to be performed by CM@Risk, (other than that contemplated by the Contract Documents under any remedy-granting provision), City will issue a written assurance at the time of such approval that such additional compensation to be paid has also been duly appropriated by the City's governing body.
- k. In the event the City is required to further advertise the completion of the Work or the Project under any local, state or Federal law, the CM@Risk shall notify the City and Design Professional of such requirement(s) in writing not less than thirty (30) days in advance and attach a copy of the specific advertising and noticing required.
- l. The CM@Risk shall, in addition to compliance with the requirements of Section 3.7.f and without limitation, not knowingly employ or contract with an illegal alien to perform any of the Work under this Agreement. The CM@Risk shall not knowingly contract with a Subcontractor that (i) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (ii) fails to certify to the CM@Risk that the Subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.

- i. The CM@Risk shall comply with any reasonable request of the Texas Workforce Commission made in the course of an investigation pursuant to state law.
 - ii. In addition to any other legal or equitable remedy, and notwithstanding anything to the contrary in the Contract Document the City may be entitled to for a breach of the Agreement, if the City terminates this Agreement, in whole or in part, due to CM@Risk's breach of the obligations set forth above in this Section 13.11.1 CM@Risk shall be liable for actual and consequential damages to the City.
- m. It is the express intention of the parties that this Agreement is not to be construed as a waiver of any immunities or defenses of the City under Texas law.
- n. Notwithstanding any other provision in the Contract Documents to the contrary, public property is protected from forced sale and therefore may not be made the subject of a mechanic's lien. Nothing in the Contract Documents shall be construed to allow a mechanic's lien on public property owned by the City. The City does not waive its immunities or right to object to or contest such a lien.

Article 14. Omitted.

Article 15. CLAIMS AND DISPUTES

Section 15.1 Claims

a. Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the City and CM@Risk arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.a does not require the City to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

b. Time Limits on Claims

The City and CM@Risk shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the dispute resolution method selected in the Agreement and within the period specified by applicable law.

c. Notice of Claims

Claims by either the City or CM@Risk must be initiated by written notice to the other party with a copy sent to the Design Professional, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Design Professional and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims by either party must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

- i. Claims Made After Final Payment
After final payment, Claims made by the CM@Risk that have not otherwise been waived pursuant to this Contract, must be initiated within one hundred and eighty (180) days from the date of final payment by written notice to the City as a condition precedent to the CM@Risk's right to sue on the Contract.
- ii. Claims by either the City or CM@Risk, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.b, shall be initiated by notice to the other party.
- d. Continuing Contract Performance
 - i. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 9 of the Contract, the CM@Risk shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract Documents.
- e. Claims for Additional Cost
If the CM@Risk wishes to make a Claim for an increase in the Contract Price, notice as provided in Section 15.1.c shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Damages available to the CM@Risk are limited to those set forth in the Texas Local Government Code, Subchapter I, Section 271.153 or its successor statute(s).
- f. Claims for Additional Time
 - i. If the CM@Risk wishes to make a Claim for an increase in the Contract Time, the CM@Risk shall provide written notice as required by Sections 8.3.d. and 8.3.e.
 - ii. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented in accordance with Section 8.3.e.
- g. Waiver of Claims for Consequential Damages
The CM@Risk and City waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes
 - .1 damages incurred by the City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
 - .2 damages incurred by the CM@Risk for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 9 of the Contract. Nothing contained in this Section 15.1.g shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

Section 15.2 Initial Decision

Omitted.

Section 15.3 Mediation

- a. Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to precedent to filing suit in a state district court having competent jurisdiction per the Contract Documents. If a statute of limitations is at issue, then suit may be filed by either party to toll the statute, but the suit shall then be stayed pending completion of the agreed mediation. If the parties cannot agree on a mediator, then the court may appoint one upon application of either party.
- b. The parties shall endeavor to resolve their Claims by mediation. A request for mediation, shall be made in writing, delivered to the other party to the Contract.
- c. Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings.
- d. The parties shall share the mediator's fee equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Written agreement(s) reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

EXHIBIT G - PREVAILING WAGE RATES

"General Decision Number: TX20260243 01/02/2026

Superseded General Decision Number: TX20250243

State: Texas

Construction Type: Building

County: Denton County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Modification Number	Publication Date
0	01/02/2026

ASBE0021-011 06/01/2025

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation)....	\$ 33.23	7.52

BOIL0074-003 01/01/2025

	Rates	Fringes
BOILERMAKER.....	\$ 33.17	24.92

CARP1421-002 10/01/2023

	Rates	Fringes
MILLWRIGHT.....	\$ 32.02	11.27

ELEV0021-006 01/01/2025

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 51.93	38.435+a+b

FOOTNOTES:

A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

B. New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Day, and Veterans Day.

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane.....	\$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59		

Tons and under.....	\$ 32.35	13.10

IRON0263-005 06/01/2025		
	Rates	Fringes
IRONWORKER (ORNAMENTAL AND STRUCTURAL).....	\$ 29.64	8.43

PLUM0100-008 11/01/2024		
	Rates	Fringes
HVAC MECHANIC (HVAC Unit Installation Only).....	\$ 39.76	14.04

SUTX2014-019 07/21/2014		
	Rates	Fringes
BRICKLAYER.....	\$ 19.89	0.00
CARPENTER, Excludes Drywall Hanging, Form Work, and Metal Stud Installation.....	\$ 19.25	0.00
CAULKER.....	\$ 16.63	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 12.93	0.00
DRYWALL HANGER AND METAL STUD INSTALLER.....	\$ 15.42	0.00
ELECTRICIAN (Alarm Installation Only).....	\$ 18.83	3.32
ELECTRICIAN (Communication Technician Only).....	\$ 19.98	3.64
ELECTRICIAN (Low Voltage Wiring Only).....	\$ 15.80	2.18
ELECTRICIAN, Excludes Low Voltage Wiring and Installation of Alarms/Sound and Communication Systems.....	\$ 18.82	0.83
FORM WORKER.....	\$ 12.13	0.00
GLAZIER.....	\$ 16.55	3.13
HIGHWAY/PARKING LOT STRIPING: Operator (Striping Machine).....	\$ 10.04	2.31
INSTALLER - SIDING (METAL/ALUMINUM/VINYL).....	\$ 14.74	0.00
INSTALLER - SIGN.....	\$ 15.61	0.00
INSULATOR - BATT.....	\$ 13.00	0.00
IRONWORKER, REINFORCING.....	\$ 14.02	0.00
LABORER: Common or General.....	\$ 11.76	0.00

LABORER: Mason Tender - Brick...	\$ 10.54	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.75	0.00
LABORER: Pipelayer.....	\$ 13.00	0.35
LABORER: Plaster Tender.....	\$ 12.22	0.00
LABORER: Roof Tearoff.....	\$ 11.28	0.00
LABORER: Landscape and Irrigation.....	\$ 12.50	0.48
LATHER.....	\$ 16.00	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 12.83	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.93	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 15.69	0.50
OPERATOR: Forklift.....	\$ 13.21	0.81
OPERATOR: Grader/Blade.....	\$ 12.48	0.00
OPERATOR: Loader.....	\$ 13.46	0.85
OPERATOR: Mechanic.....	\$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 18.44	0.00
OPERATOR: Roller.....	\$ 15.04	0.00
PAINTER (Brush, Roller and Spray), Excludes Drywall Finishing/Taping.....	\$ 13.21	2.33
PAINTER: Drywall Finishing/Taping Only.....	\$ 13.76	2.84
PIPEFITTER, Excludes HVAC Pipe Installation.....	\$ 22.98	6.35
PLASTERER.....	\$ 15.75	0.00
PLUMBER (HVAC Pipe Installation Only).....	\$ 22.16	5.46
PLUMBER, Excludes HVAC Pipe Installation.....	\$ 20.84	4.74
ROOFER.....	\$ 17.19	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 20.88	5.19
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 24.88	5.97

SPRINKLER FITTER (Fire Sprinklers).....	\$ 22.94	0.00
TILE FINISHER.....	\$ 11.22	0.00
TILE SETTER.....	\$ 14.25	0.00
TRUCK DRIVER: 1/Single Axle Truck.....	\$ 16.40	0.81
TRUCK DRIVER: Dump Truck.....	\$ 12.39	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00	4.11

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

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

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

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

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator

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

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

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

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

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END OF GENERAL DECISION

"

	Rates	Fringes
Ironworkers:		
Reinforcing & Structural....	\$ 29.64	8.43

 PLUM0100-002 11/01/2024

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 39.76	14.04

 SHEE0068-002 11/01/2012

	Rates	Fringes
Sheet metal worker.....	\$ 27.64	8.84

 SUTX1990-039 08/01/1990

	Rates	Fringes
CARPENTER.....	\$ 10.536	
Concrete Finisher.....	\$ 9.603	
Form Builder.....	\$ 8.036	
Form Setter.....	\$ 9.578	
Laborers:		
Common.....	\$ 7.25	
Utility.....	\$ 7.25	
Pipelayer.....	\$ 7.961	
Power equipment operators:		
Backhoe.....	\$ 10.971	
Bulldozer.....	\$ 9.942	
Front end loader.....	\$ 10.771	
Mechanic.....	\$ 9.88	
Motor Grader.....	\$ 11.633	
Oiler.....	\$ 9.183	
Scraper.....	\$ 8.00	
TRUCK DRIVER.....	\$ 7.465	

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

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 Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is

like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

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Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a

weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

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

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

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

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

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

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

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

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

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END OF GENERAL DECISION

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EXHIBIT V – WARRANTY (VERTICAL PROJECTS VERSION)

V.1 Warranty

V.1.1 The CM@Risk warrants to the City and Design Professional that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The CM@Risk further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The CM@Risk's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the CM@Risk, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Design Professional, the CM@Risk shall furnish satisfactory evidence as to the kind and quality of materials and equipment. **THE CM@RISK SHALL DEFEND AND HOLD THE CITY HARMLESS AGAINST ANY CLAIM, DEMAND, LOSS, OR DAMAGE BY ANY BREACH OF THIS WARRANTY, AND CM@RISK ACKNOWLEDGES IT SHALL NOT LIMIT SUCH WARRANTY BY ANY OTHER PROVISION OF THIS AGREEMENT.**

V.1.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the City and shall commence in accordance with Section 9.8.4.

V.1.3 When written warranties are specified, the document shall include the following information:

Name and address of Project and City;
Article, materials, or systems covered;
Name and address of Installer;
Name and address of CM@Risk; and
Signature of individual authorized to sign contracts for the company issuing the warranty.

V.1.4 The following minimum warranty terms shall be incorporated:

- .1 Duration shall be two years or as otherwise specified, dated from the Date of Substantial Completion;
- .2 The article, material or system is free from defective materials and workmanship;
- .3 Costs of repair or replacement shall not accrue to the City, including, without limitation, repair or replacement of other work disturbed by, or because of, repair or replacement; and
- .4 The warranty period of two year, or as otherwise specified, shall recommence upon the identification and completion by CM@Risk and acceptance by City of any warranty claim during the initial two-year (2) warranty period.

V.1.5 Warranties which are provided by a manufacturer for its product shall be received by the CM@Risk, filled out and filed with the manufacturer or other appropriate entity in coordination with the City. Certificates or registration stubs shall be included with the record documents submitted for the City upon completion of the Work. The City shall administrate manufacturer's warranties/guarantees after expiration of the CM@Risk's warranty.

V.1.6 Temporary or trial usage by the City of any mechanical device, machinery, apparatus, equipment, or any work or material supplied under the Contract Documents before final completion and written acceptance by the Design Professional and City shall not be construed as evidence of the Design Professional's or the City's acceptance of same, or the commencement of any warranty periods.

V.1.7 The City has the privilege of such temporary or trial usage, for such reasonable time as the City, or the Design Professional deem proper. The CM@Risk shall make no claims for damage or injury to, or breaking of, any parts of such work which may be caused by weakness or insufficiency of structural parts, or by defective materials or workmanship.

V.1.8 The CM@Risk may, without cost to the City, make such trial usage. However, trials shall only be conducted with the Design Professional's prior approval and under its observation as may be required by either of them. Equipment and/or materials shall be replaced or returned to "as new" condition prior to acceptance by the City.

V.1.9 The CM@Risk agrees to assign to the City at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

V.1.10 If necessary as a matter of law, the CM@Risk may retain the right to enforce directly any such manufacturers' warranties during the two (2) year period following the date of Substantial Completion.

EXHIBIT W – USE of the SITE, DELIVERY & STORAGE

The CM@Risk shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

W.1 The CM@Risk shall coordinate the CM@Risk's operations with, and secure the approval of, the City before using any portion of the site.

W.2 The CM@Risk shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the Project site; all property at the Project site; and all persons or property adjacent thereto, which includes, but is not limited to, the all the following duties and acknowledgements:

- .1 The CM@Risk acknowledges the Project site comprises and/or may be adjacent to existing structures and that these site areas may be occupied during the performance of some portions of this Contract;
- .2 The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause interference with adjacent stakeholders or create hazardous conditions;
- .3 The CM@Risk shall be responsible for the mitigation and/or abatement of all noise, dust, fumes, traffic, or other by-product of construction activity that, in the opinion of the City, have an adverse effect on the quality of life or productivity for Project stakeholders, the City's current operations, or the City's employees. Such mitigation and/or abatement shall be performed in manner and with a result completely and wholly acceptable to the City;
- .4 The CM@Risk shall control its personnel and the Subcontractors on site, especially regarding the use of alcohol or profanity, dressing in an inappropriate manner, parking in an inappropriate place, or other activities deemed to be inappropriate, to the satisfaction of the City. Repeat offenses will cause the City or Design Professional to require, through the CM@Risk, the temporary or permanent removal of the offending individuals, Subcontractor(s) or Sub-subcontractor(s) from the site;
- .5 The CM@Risk shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor or Sub-subcontractor. The facilities of any existing, nearby buildings will not be available for construction use; and
- .6 The CM@Risk is advised that the project site area is subject to, among other inclement weather, unpredictable and high winds. When all or a portion of the Work is suspended for any reason, the CM@Risk shall securely fasten down all coverings and stored materials on site and fully protect the Work, as necessary, from injury or damage by any cause and to prevent possible damage caused by flying materials and debris.

W.3 The CM@Risk shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas, which includes, but is not limited to, all of the following duties:

- .1 The access to the site shall be maintained in compliance with all local, state, and Federal code and life safety requirements for ingress by first responders and other similar emergency requirements;

- .2 The CM@Risk shall inform the City, Design Professional, Program Manager and any officials referenced in Section W.5 in writing a minimum of thirty (30) calendar days prior to any disruption of access, specifically and graphically showing the nature of the disruption, as well as the hours it will be disrupted. Such disruption will be subject to City's and Design Professional's approval, such approval not to be unreasonably withheld;
- .3 The City shall be responsible for storm related debris and snow removal to the limits of the construction site only so far that the CM@Risk will have access to the entrance to the construction area; and
- .4 Storm related debris and snow removal within the limits of work and/or for the purpose of performing and protecting work by individual contractors is the duty of the CM@Risk.

W.4 During the performance of the Work, the CM@Risk, its Subcontractors, Sub-subcontractors, suppliers and their employees agree they shall:

- .1 Use such entrances to the construction site that may be designated by the City;
- .2 Perform the Work at such times of the day and days of the week as may be designated by the City; and
- .3 Accept that these entrances and times may be reviewed and changed from time to time by the City.

W.5 The CM@Risk shall notify all public utility companies a minimum of two (2) business days prior to the commencement of any work by it or its Subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the City to proceed has been given to the CM@Risk. If the utility service must be interrupted, the CM@Risk shall, at CM@Risk's sole cost and expense, notify the head of the local administrative services (by way of example only, and without limitation, the City manager, the mayor, the City or County clerk, etc. as applicable) and the utility users affected by the interruption. Such notice shall consist of direct written communication, publication in a local newspaper, and/or announcement on local radio or television stations, whichever is most reasonably calculated to give the most effective notice to such utility users.

W.6 The CM@Risk shall exercise due diligence in seeing that all equipment, material, and supplies are delivered in advance of the time they are needed on the job and shall properly store and protect same at the CM@Risk's expense.

W.7 Notwithstanding any other provision herein, the CM@Risk shall take all necessary measures to store materials on site for which payment has been requested by the CM@Risk or been made by the City so that they shall not deteriorate, be damaged or be stolen, which includes, but is not limited to, all the following:

- .1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the CM@Risk;
- .2 Protection of construction materials and equipment stored at the Project site from fire, weather, burglary, pilferage, vandalism and mischief, damage, and all other adversity; and the care and protection of materials and Work installed in the building is solely the responsibility of the CM@Risk;
- .3 The CM@Risk shall bear sole responsibility for the restoration of damaged Work and replacement of damaged or stolen materials at no additional cost to the City; and

- .4 After equipment is no longer required for the Work, it shall be promptly removed from the Project site.

W.8 The CM@Risk shall not deliver any materials to the site which are not to be installed by same CM@Risk without fifteen (15) day's advance notice in writing to the City of the location, date, and time of such delivery to allow proper coordination. Such materials shall be received jointly by a representative of the CM@Risk and a representative of the City, who shall agree, and the CM@Risk shall document such agreement in writing:

- .1 The materials delivered are undamaged, or if damaged, such damage is documented by digital photo(s);
- .2 They are in the quantities shown on the purchase order, invoice or bill of lading accompanying the shipment or delivery or otherwise provided;
- .3 The storage conditions are adequate for the purposes; and
- .4 The CM@Risk has accepted responsibility for insurance and ongoing protection per the terms of this Agreement for such material until it is released to a third party authorized in writing by the City to receive it.

EXHIBIT X – COST of the WORK

X.1 Costs to Be Reimbursed

X.1.1 The term Cost of the Work shall mean costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections X.1 through X.7.

X.1.2 Where, pursuant to the Contract Documents, any cost is subject to the City's prior approval, the CM@Risk shall obtain such approval in writing prior to incurring the cost.

X.1.3 Costs shall be at rates not higher than the competitive prices paid at the place of the Project, except with prior approval of the City.

X.2 Labor Costs

X.2.1 Wages for labor in the direct employ of the CM@Risk in the performance of the Work at the rates set forth in the GMP.

X.2.1.1 Pursuant to Chapter 2258, Texas Government Code, all contractors and any Subcontractor involved in the construction of a public work project shall pay not less than the prevailing rates as per diem wages in the locality at the time of construction to all laborers, workmen and mechanics employed by them in the execution of this contract. CM@Risk shall assure that these requirements are met for the Project and shall insure that every contract or subcontract relating to the Work requires, on behalf of City, that the prevailing wage rates be paid.

X.2.1.2 The CM@Risk shall be provided an applicable Department of Labor Wage Rate Determination for use on the Project required by Chapter 2258.022, Texas Government Code. In the event the City does not provide this Labor Wage Rate Determination, the CM@Risk shall request it in writing in a timely manner, so as not to delay the CM@Risk's initial subcontractor procurement process during preconstruction. The CM@Risk shall, if requested by the City, assist the City in conducting a survey of the wages paid, by labor class, on projects of a similar type in a similar location.

X.2.2 Wages or salaries of the CM@Risk's supervisory and administrative personnel when stationed at the site and performing Work, with the City's prior approval.

X.2.2.1 Charges for CM@Risk's personnel, when stationed at the field office and engaged exclusively in the performance of the Work, or other personnel as CM@Risk and City may mutually agree, as provided and set forth in the GMP.

X.2.3 Wages and salaries of the CM@Risk's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

X.2.4 Costs paid or incurred by the CM@Risk, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, but not merit bonuses or profit-sharing provided such costs are based on wages and salaries included in the Cost of the Work under Sections X.2.1 through X.2.3. Charges for such costs shall not exceed the CM@Risk's actual cost and, as a result, when computing amounts chargeable for such costs CM@Risk shall give proper consideration to what portion of such charges are solely attributable to the Work and the effect of any annual or other periodic limitations on any such charges.

X.2.5 The rates set forth in the GMP shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Change Order.

X.2.6 Notwithstanding the rates shown in the GMP to be used by the CM@Risk for progress billings, the City shall have the right to audit the CM@Risk's actual labor costs, burdens, and related expenditures before final payment, and adjust the City's payment to the CM@Risk for variations found accordingly.

X.3 Subcontract Costs

Payments made by the CM@Risk to Subcontractors in accordance with the requirements of the subcontracts properly entered into under this Agreement.

X.4 Costs of Materials and Equipment Incorporated in the Completed Construction

X.4.1 Costs, including temporary storage and transportation of materials and equipment incorporated, or to be incorporated, in the completed construction.

X.4.2 Costs of materials described in the preceding Section X.4.1 in excess of those actually installed but required to provide allowance for waste and for spoilage. Unused excess materials, if any, shall be properly stored at the site, or in accordance with the City's instructions, provided to the City at the completion of the Work or, at the City's option, shall be sold by the CM@Risk. Any amounts realized from such sales shall be credited to the City as a deduction from the Cost of the Work. CM@Risk shall use its best efforts and judgment to avoid purchasing excess materials without the prior approval of the City.

X.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

X.5.1 Costs, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools (not owned by the workers) consumed in the performance of the Work. Any such items used but not consumed, which were paid for by the City, shall become property of the City and shall be delivered to the City upon completion of the Work in accordance with instructions furnished by the City. If the City elects, however, the CM@Risk shall purchase any items from the City at a purchase price equal to the original cost charged to the City, less the reduction in fair market value resulting directly from any use of such item in connection with the Work or such other price which is mutually acceptable for the City and the CM@Risk. Upon demand by the City, the CM@Risk shall furnish the City with any information and documentation necessary to verify the period of time for which items were used in connection with the Work.

X.5.2 Rental charges of all necessary machinery and equipment, exclusive of hand tools, not used at the site of the Work, whether rented from the CM@Risk or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof. Such rental charges shall not exceed the amount set forth in in the GMP, attached hereto and made part hereof. In the absence of any appropriate rental amount set forth in the GMP, rental charges shall be consistent with those generally prevailing in the location of the Project. The CM@Risk shall obtain bids for all machinery and equipment to be rented from no less than three (3) responsible suppliers other than the CM@Risk itself, or an Affiliate as defined herein. The City shall, with the advice of the CM@Risk and CM@Risk, determine which bid is to be accepted. In no event shall the CM@Risk be entitled to reimbursement for any cumulative total of rental charges in connection with any single piece of machinery or equipment in excess of sixty percent (60%) of its fair market value as of the date that such machinery or equipment is first put into service in connection with the Work. The CM@Risk shall pay any excess rental charges. CM@Risk shall disclose to the City and CM@Risk if any rental arrangements include a lease to purchase component as a result of which rental payments chargeable to City as costs are applied, in whole or in part, to CM@Risk's acquisition

of such rented equipment, in which event the rental rate otherwise provided for shall be reduced by fifty percent (50%).

X.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

X.5.4 Costs of the CM@Risk's site office, including reproduction costs, electronic communications and data connections at the site, postal and parcel express delivery charges, documented petty cash expenses of the site office as well as general office equipment and supplies.

X.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the City's prior approval, when stored and maintained in compliance with the Contract Documents.

X.6 Miscellaneous Costs

X.6.1 That portion of insurance and bond premiums that can be directly attributed to and required by this Agreement, provided, however, that such costs shall not be included in the Cost of the Work for purposes of calculating the CM@Risk's fee. Expenses shall be substantiated by documentation in form of substance satisfactory to City. Such premiums shall be adjusted at the Final Acceptance of the Work to reflect the final Contract Price.

X.6.2 Sales, use, or similar taxes, imposed by a governmental authority, which are related to the Work and for which the CM@Risk is liable.

X.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the CM@Risk is required by the Contract Documents to pay.

X.6.4 Fees of testing laboratories for tests required by the Contract Documents; except those related to nonconforming Work other than that which payment is permitted under the Contract Documents.

X.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents, and provided such royalties, fees, and other costs are not excluded by provisions of the Contract Documents.

X.6.6 Costs of document reproductions and delivery charges.

X.6.7 That portion of the reasonable expenses of the CM@Risk's personnel incurred while traveling in discharge of duties connected with the Work, when in compliance with Exhibit Y – General Conditions Costs.

X.6.8 The cost of travel more than 100 miles from the site by; and commercial lodging, rental housing and meals for the CM@Risk's supervisory personnel properly and reasonably incurred in the performance of the Work is "Travel and Subsistence". Travel and Subsistence incurred in accordance with the CM@Risk's written personnel policy for actual and verifiable relocation and temporary living expenses of personnel required for the Work, in case it is necessary to relocate such personnel from locations further than one hundred (100) miles from the site, when approved by the City in advance and in writing, and not in excess of the line item amount shown for this purpose in the GMP.

X.7 Other Costs and Emergencies

X.7.1 Other costs incurred in the performance of the Work, with the City's prior written approval.

X.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, to the extent not (1) caused by the CM@Risk, a subcontractor, or anyone for whom either is responsible, or (2) capable of being prevented through timely notice of an unsafe condition to the City.

X.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the CM@Risk, Subcontractors, or suppliers, provided that such damaged or nonconforming Work resulted from causes other than the fault, negligence, or neglect of the CM@Risk or its subcontractors, vendors or suppliers in whole or in part, or, failure of CM@Risk or its subcontractors, vendors or suppliers to comply with all of the requirements of the Contract Documents or the failure of the CM@Risk's personnel to adequately supervise the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the CM@Risk from insurance, Subcontractors or suppliers.

X.7.4 The losses included in Section X.7.3, may include settlements made with the prior written consent and approval of City. No such losses and expenses shall be included in the Cost of the Work for the purpose of determining CM@Risk's Fee unless such loss requires substantial reconstruction and CM@Risk is placed in charge thereof. In such event, CM@Risk shall be paid for profit and overhead in an amount calculated by the percentage identified in the Contract Documents, for Changes to the Work of the cost of any such reconstruction, provided such substantial reconstruction is not: (i) required due to the fault or negligence of the CM@Risk or failure of CM@Risk to comply with all of the requirements of the Contract Documents; or (ii) incidental reconstruction, which for purposes of this Section X.7.4 is hereby deemed to mean any reconstruction involving a cost of less than One Thousand Dollars (\$ 1,000).

X.9 Costs Not to Be Reimbursed

X.9.1 The Cost of the Work shall not include (unless otherwise specifically stated in the GMP) the items listed below:

- .1 Salaries and other compensation of the CM@Risk's personnel stationed at the CM@Risk's principal office or offices other than the site office, except as specifically provided in Section X.2, or as may be provided in the GMP;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the CM@Risk or paid to any Subcontractor or vendor, unless the City has provided prior approval;
- .3 Expenses of the CM@Risk's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections X.1 to X.7;
- .5 Rental costs of machinery and equipment, except as specifically provided herein;
- .6 The CM@Risk's capital expenses, including interest on the CM@Risk's capital employed for the Work;
- .7 Except as provided in Section X.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the CM@Risk, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .8 Costs incurred in the performance of Preconstruction Phase Services (unless specifically stated in the GMP);
- .9 Any cost not specifically and expressly described in Sections X.1 to X.7;
- .10 Costs, other than costs included in Change Orders approved by the City, that would cause the Guaranteed Maximum Price to be exceeded;
- .11 Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems relating to accounting in CM@Risk 's office and even if

at the site, except as specifically identified herein;

- .12 Interest on CM@Risk 's capital or on money borrowed by CM@Risk, including the capital employed by CM@Risk in the performance of the Work;
- .13 Amounts required to be paid by CM@Risk for Federal and/or State income, franchise taxes or other business taxes, but not including any applicable sales taxes;
- .14 Legal, accounting, or other similar professional services provided by or to CM@Risk, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with City, the Design Professional or any other person or entity relating to the Project or otherwise;
- .15 Sales, entertainment, and meal expenses;
- .16 Employee vehicle expenses, including fuel above the "Travel & Subsistence" not-to-exceed amount;
- .17 General Conditions, Weather Protection and Travel and Subsistence in excess of the line items shown in the GMP;
- .18 Costs related to CM@Risk's indemnification obligations;
- .19 The cost of Travel and Subsistence not in compliance with the requirements of Section X.6.12; and
- .20 Costs for insurance through a captive insurer owned or controlled by the CM@Risk.

X.10 Discounts

X.10.1 Cash discounts obtained on payments made by the CM@Risk shall accrue to the City if: (1) before making the payment, the CM@Risk included the amount to be paid, less such discount, in an Application for Payment and received payment from the City; or (2) the City has deposited funds with the CM@Risk with which to make payments. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the City, and the CM@Risk shall make provisions so that they can be secured. The CM@Risk shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work from any source including but not limited to its Subcontractors, vendors, or other suppliers of goods, insurance or other services without providing the City with at least thirty (30) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds if and when necessary to obtain such discount, rebate or refund on behalf of the City in accordance with the requirements of this Section X.8.10.

X.10.2 Amounts that accrue to the City in accordance with the provisions of Section X.8.10 shall be credited to the City as a deduction from the Cost of the Work.

EXHIBIT Y – GENERAL CONDITIONS COSTS (VERTICAL PROJECTS VERSION)

Any costs which comprise the Cost of Work, and reimbursable under Exhibit X – Cost of the Work which are also set forth in the detailed general conditions estimate included within each Approved GMP, shall not exceed the total amount shown in aggregate herein for such expenditures. However, any single line item in General Conditions, with the sole exceptions of those included in "Weather Protection" and "Travel and Subsistence", may be exceeded if offset by the aggregate of corresponding or greater underages at other line items, and the total cost for General Conditions is not exceeded.

- Y.1** CM@Risk's Change Order Requests will include additional General Conditions costs as justifiable, and to the extent the actual expenditures of General Conditions cost items are increased by reason of increase(s) in: the duration of the Work; the quantity of CM@Risk's facilities and equipment required; or number or duration of supervisory personnel on site directly required to enact the requested change. General Conditions costs shall not be increased for additional personnel and labor costs not actually incurred by the CM@Risk and documented to the satisfaction of the City.
- Y.2** Notwithstanding the above, the CM@Risk has included in General Conditions sufficient supervision and project controls personnel to prepare and process a standard amount of project documentation, including without limitation, requests for information, meeting minutes, Proposal Requests, Change Order Requests, Change Orders, and other CM@Risk's administration and deliverables normally required on similar projects. The CM@Risk will not be additionally compensated above the amount shown in General Conditions for preparing or processing these documents.
- Y.3** The cost of properly and reasonably maintaining access to the Work in spite of, facilitating progress of the Work during, and protecting the Work itself from the impact of inclement weather is "Weather Protection". Weather Protection shall not exceed the total of the line items shown for this purpose in the General Conditions, given the Work is performed during average weather conditions for the Project site, as such average is defined in the Contract documents.
- Y.4** Line items in General Conditions that shall be considered, in their aggregate, for the purpose of calculating the Weather Protection maximum costs allowable under this Agreement include weather protection, water and snow removal, temporary heat, and temporary protection.
- Y.5** The actual costs for General Conditions, Weather Protection, and Travel and Subsistence will be billed on an "as incurred" and actual cost basis, and any unused portion of such amounts will revert to the City as savings below the Guaranteed Maximum Price.
- Y.6** The CM@Risk shall, without limitation keep such separate and distinct records as are required for the CM@Risk to easily validate the accuracy of the CM@Risk's billing for the costs of General Conditions, Weather Protection, and Travel and Subsistence.
- Y.7** In the event the CM@Risk believes General Conditions, Weather Protection, or Travel and Subsistence line item(s) included in the Guaranteed Maximum Price should be increased due to changes in the Work or circumstances beyond the CM@Risk's responsibilities to control under this Agreement; or the City or CM@Risk believes such line items should be lowered based on better circumstances for performing the Work than originally anticipated by the City and CM@Risk, the Guaranteed Maximum Price shall then be adjusted as provided in the Contract Documents for changes in the Work.

EXHIBIT Z – TEXAS WATER DEVELOPMENT BOARD (TWDB) SPECIAL CONDITIONS



Texas Water Development Board
Supplemental Construction Contract
Conditions

For Equivalency Projects under the Clean
Water State Revolving Fund and Drinking
Water State Revolving Fund Programs

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Forms and Guidance:

The Texas Water Development Board (TWDB) forms and guidance documents noted in this instruction document may be accessed through the TWDB's Financial Assistance web site at:

<http://www.twdb.texas.gov/financial/instructions/index.asp>

Search by either the document number or name.

I. INSTRUCTIONS FOR APPLICANTS

1. Applicability

These Supplemental Contract Conditions contain provisions that are worded to comply with certain statutes and regulations, which specifically relate to all Drinking Water State Revolving Fund (DWSRF) Equivalency Program and Clean Water State Revolving Fund (CWSRF) Equivalency Program projects. Provisions that are applicable to the project's funding source or dollar value of the contract are noted within these provisions.

Construction projects which are considered Non-Equivalency projects do not use these conditions but instead use Texas Water Development Board (TWDB) Supplemental Conditions TWDB-0551. Projects with State Loan funding use Supplemental Conditions TWDB-0552

2. Use of Conditions

The conditions and forms listed under ***Section II: Instructions to Bidders*** are to be included in the instructions to bidders for construction services. The provisions listed under ***Section III: Construction Contract Supplemental Conditions*** must be included, in their entirety, with the other general and special conditions that are typically included in the construction contract documents by the Engineer¹.

3. Modifications to Provisions

The Applicant may need to modify parts of these provisions to better fit the other provisions of the construction contract; however, everything herein must be included in the contract documents. The Applicant and the Engineer should carefully study these provisions before incorporating them into the construction contract documents. In particular, Water Districts and other types of Districts should be aware of statutes relating to their creation and operation, which may affect the application of these conditions. **The TWDB Project Engineer/Reviewer should be consulted if the Applicant thinks there is a need to modify parts of these provisions.**

Section III Supplemental Condition No. 17 (Archeological Discoveries and Cultural Resources) and Section III Supplemental Condition No. 18 (Threatened and Endangered Species) may be superseded or modified by project-specific environmental conditions established during the environmental review process.

These documents may confer certain duties and responsibilities on the Engineer that are beyond, or short of, what the Applicant intends to delegate. The Applicant should ensure that the contractual agreement with the Engineer provides for the appropriate services. Otherwise, the Applicant should revise the wording in these special conditions to agree with actual delegated functions.

¹ Throughout this document "Engineer" is used to mean Design Engineer/Engineer of Record, Prime Engineer, Consulting Engineer, or Owner's Engineer, depending on the contract type between the Applicant and the Engineer and depending on the phase of the project (i.e., planning, design, or construction).

4. Good Business Practices

There are other contract provisions that the Applicant and Engineer need to include as a matter of good business practice. It is recommended that provisions addressing the following matters be included in the construction contract.

- (a) Specifying the timeframe for accomplishing the construction of the project, and the consequences of not completing construction on time, including liquidation damages.
- (b) Specifying the type, dollar value, and documentation of insurance the Contractor is to carry. At a minimum, the Contractor should carry worker's compensation, liability, and builder's risk insurance that will meet state statutory limits.
- (c) Identifying the responsibility of the Contractor, including warranty of work.
- (d) Price reduction for defective pricing of negotiated costs.
- (e) Differing site conditions – notice and claims regarding site conditions differing from indicated conditions.
- (f) Specifying maximum time permitted to submit an official Change Order after a field change has been authorized and implemented.
- (g) Covenants against contingent fees – prohibit contingent fees for securing business.
- (h) Gratuities – prohibitions against offering and accepting gratuities.
- (i) Auditing and accessing records.
- (j) Suspension of work – conditions under which the Applicant may suspend work.
- (k) Termination – conditions under which the Applicant may terminate.
- (l) Remedies – how disputes will be remedied.

5. Other Requirements

If applicable, Trench Safety requirements shall adhere to the [Health and Safety Code Chapter 756, Subchapter C](#), which includes reference to the Occupational Safety and Health Administration (OSHA) standards for trench safety in effect during the period of construction of the project and Owner's Geotechnical information to assist Contractor in design of Trench Safety System

There may be other local government requirements and applicable Federal and State statutes and regulations which are not included or addressed by these conditions. It is the Applicant's responsibility to ensure that the project and all contract provisions are consistent with all relevant statutes and regulations.

6. Advertisements for Bids

State procurement statutes **require advertising a contract for bid at least once a week for at least two (2) consecutive weeks**². By not following this requirement, the project may need to be re-advertised (i.e., rebid). The official advertisement for bids that is published in the newspaper must include certain information such as, but not limited to, the following:

- (a) A clear description of what is being procured.
- (b) How to obtain plans and specifications, necessary forms and information.
- (c) The date and time by which bids are to be submitted (deadline).
- (d) The address where bids are to be provided.
- (e) A statement that the contract is contingent upon release of funds from the TWDB.
- (f) A statement that any contract(s) awarded under this Invitation for Bid (IFB), Request for Proposals (RFP), or Request for Qualifications (RFQ) is/are expected to be funded in part by financial assistance from the TWDB. Neither the U.S. Environmental Protection Agency (EPA) nor the State of Texas, nor any of its departments, agencies, or employees, are or will be a party to this IFB, RFP, RFQ, or any resulting contract.
- (g) As directed by the TWDB, **one** of the following must be included:
 - a. Beginning with SRF Equivalency projects approved under the 2023 Intended Use Plan (IUP) or later - Any contract(s) awarded under this Invitation for Bids is/are subject to the Build America, Buy America (BABA) Act requirements of Section 70901 of P.L. 117-58 of the Bipartisan Infrastructure Law, 2021; **or**
 - b. For SRF Equivalency projects approved under the 2022 IUP or earlier – Any contract(s) awarded under this Invitation for Bids is/are subject to the American Iron and Steel (AIS) requirements of federal law, including federal appropriation acts and/or Section 608 of the Federal Water Pollution Control Act.
- (h) *This contract is subject to the Texas Water Development Board's (TWDB) State Revolving Fund (SRF) procurement requirements and Environmental Protection Agency's (EPA) SRF procurement requirements. **EPA rules require that applicants and prime contractors make a good faith effort to award contracts, subcontracts, and procurements** to all businesses through demonstration of the six affirmative steps. For more details of the SRF procurement guidance, please visit www.texas.gov/financial/programs/SRF/SRF_Procurement. The following is specific text that should be included as-is:

This contract is subject to the Texas Water Development Board (TWDB) and the

² From LGC 252.041, Municipalities are required to advertise in a newspaper at least once a week for two consecutive weeks.

Environmental Protection Agency's (EPA) State Revolving Fund (SRF) Procurement requirements, which includes and offers procurement opportunities to all businesses during solicitations. EPA rules require that applicants and prime contractors/consultants make a good faith effort to award a fair share of contracts, subcontracts, and procurements in a nondiscriminatory manner through demonstration of the six affirmative steps. For more details of this Program, please visit www.twdb.texas.gov/financial/programs/SRF/SRF_Procurement.

The following is specific text that should be included as-is:

Equal Opportunity in Employment - All qualified Applicants will receive consideration for employment.

- (i) Acknowledgement of any special requirements such as mandatory pre-bid conference.
- (j) Affirmative Action requirements, requiring no discrimination on the basis of race, color, national origin, or sex (40 CRF Part 7).
- (k) Right to reject any and all bids.
- (l) A statement that Davis-Bacon prevailing wage requirements apply to the construction, alteration, or repair of treatment works carried out, in whole or in part, with assistance made available by the Clean or Drinking Water State Revolving Fund Programs (CWSRF or DWSRF).
- (m) For additional information on Davis-Bacon Wage Rate Requirements and its applicability to this contract, please consult TWDB Guidance No. DB-0156.

7. Bid Proposal

The Bid proposal form should account for the following:

- (a) If a lump sum bid, include a list of the materials used and associated costs.
- (b) Distinguish TWDB-funding Eligible and Ineligible items.
- (c) Accommodate Trench Safety requirements with separate per unit pay item for trench excavation safety protection in accordance with [Health and Safety Code Chapter 756, Subchapter C](#) and as briefly noted below:
 - 1. Separate pay item for special shoring requirements; and
 - 2. Separate pay item for trench excavation safety protection.
- (d) Include space for the Contractor to acknowledge receipt of each Addendum issued during the bidding process.

8. Bidding Process

The Plans and Specifications (P&S) should include an explanation of how the bids will be processed and should include the following components:

- (a) Whether a Pre-bid Conference will be held, whether it is optional or mandatory, and where and when it will be held. If possible, it is recommended to hold the pre-bid via Zoom, Microsoft Teams, or other online platform, as well as in person. The TWDB Project Engineer/Reviewer is to be invited to the Pre-Bid Conference.
- (b) Specify the criteria and process for determining responsiveness and responsibility of the bidder.
- (c) Specify the method of determining the successful bidder and award (e.g., award to the lowest responsive, responsible bidder, accounting for any multiple parts to bids).
- (d) Allow for withdrawal of a bid due to a material mistake.
- (e) Identify the time frame that the bids may be held by the Applicant before awarding a contract (i.e., typically for 60 or 90 days).
- (f) Acknowledge the right of the Applicant to reject any and all bids.

9. Debarment and Suspension Certification

Financial assistance recipients must fully comply with the requirements of Subpart C of 2 CFR Part 180 – “*Responsibilities of Participants Regarding Transactions Doing Business with Other Persons*” - as implemented and supplemented by 2 CFR Part 1532. The recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 – “*Covered Transactions*” – includes a term or condition requiring compliance with Subpart C.

The recipient is fully responsible for requiring the inclusion of a similar term or condition in any subsequent lower-tier covered transactions.

Recipient acknowledges that failing to disclose the information required under 2 CFR 180.355 may result in the delay or negation of the financial assistance, or pursuance of legal remedies including debarment and suspension.

The recipient must complete and submit the **Debarment/Suspension Certification (SRF-404)**, certifying that it has checked the federal System for Award Management website (<https://sam.gov/content/home>) and determined that the Contractor is not an “excluded party” that is debarred, suspended, or otherwise excluded from participation in federal assistance programs under Executive Order 12549, as required by 2 CFR Part 180 and 2 CFR Part 1532.

10. Release of Funds

Prior to the TWDB's authorization for the Applicant to issue a notice to proceed (NTP), and subsequent release of funds for construction (according to program specific requirements), the Applicant and its Engineer must provide the following bid documents for TWDB review:

(a) Submittal of Bid Documents to the TWDB Project Engineer/Reviewer to allow contingent award of contract:

- Advertisement and Affidavit of Advertisement (for municipalities, the project must be bid at least once a week for two (2) consecutive weeks in a newspaper),
- Bid tabulation,
- All Addenda submitted and approved for the contract,
- Bid proposal of apparent low bidder (or chosen bidder with explanation), including the Contractor's bid guarantee or bid bond,
- Contractor's SRF procurement forms TWDB-0217,
- Applicant's Debarment/Suspension Certification for the Contractor,
- Site Certificate (ED-101),
- Engineer's recommendation to award letter,
- A description of any bidding irregularities, and
- Construction inspection proposal.

Then the TWDB can issue authorization for the Applicant to issue the contingent Notice of Award for the construction contract.

(b) Once the Applicant has issued their contingent Notice of Award of the construction contract, they must submit a bound copy (single file PDF document) of the **executed contract documents (including specifications) and a bound copy (single file PDF document) of the **Approved Plan Set**. A complete set of bound executed contract documents should include:**

- Front-End Documents, Addenda, Executed Agreement, and Technical Specifications as approved by the TWDB and TCEQ (as applicable),
- Contractor's Act of Assurance (TWDB Form ED-103),
- Contractor's Act of Assurance Resolution (TWDB Form ED-104),
- Payment and Performance Bonds (must be executed on or after the date of the contract),
- Contractor's Wage Rate Determination(s),
- Contractor's Certificate of Insurance, and
- **If applicable, the Applicant's Sufficiency of Funds letter.**

After reviewing and approving the executed contract documents, the TWDB will issue an authorization for the Applicant to issue a Notice to Proceed (NTP). At this time, the TWDB staff can begin releasing construction funds **in accordance with program requirements**.

Once construction begins, the Applicant must submit **monthly** Outlay Requests. Outlay Requests that include requests for construction contract funds, must include the following documents:

- DB-0154 – Monthly Davis Bacon Wage Rate Certificate of Compliance; and either
- TWDB-1110-A Monthly Build America, Buy America (BABA) (as applicable) **or**
- TWDB-1106-A – Monthly American Iron and Steel Certificate (as applicable)

In addition, the first Outlay Request for construction contract funds must include the State Revolving Fund Project Public Awareness Certification ([TWDB-1109-A](#)).

Failure to provide these certificates will result in denial of release of funds.

For any questions or proposed modifications to these conditions, please contact your TWDB Project Engineer/Reviewer.

II. INSTRUCTIONS TO BIDDERS

The language and conditions listed in this Section must be included in the "Instructions to Bidders" section of the construction contract documents.

1. Contingent Award of Contract

This contract is contingent upon release of funds from the TWDB. Any contract(s) awarded under this Invitation for Bids is/are expected to be funded in part by a loan or loan with principal forgiveness from the TWDB and a grant from the EPA. Neither the State of Texas, the EPA, nor any of its departments, agencies, or employees, are or will be a party to this Invitation for Bids or any resulting contract.

2. State Revolving Fund Procurement Requirements

The TWDB CWSRF and DWSRF programs receive federal funding from the EPA. As a condition of federal grant awards, EPA regulations require that funding recipients (municipalities, towns, public water authorities, nonprofit water supply corporations, etc.) and sub-recipients (prime consultants, prime contractors, and subcontractors) make a "**good faith efforts**" to award a fair share of contracts, subcontracts, and other procurements in a nondiscriminatory manner whenever procuring **Construction and Non-Construction (supplies, services and equipment)**. More information on these requirements is available in Section III, Supplemental Contract Conditions section of this guidance **No. 16. State Revolving Fund Procurement requirements**.

3. Davis-Bacon Wage Rate Requirements

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

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

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

Any contracts in excess of \$2,000 must include the provisions of the Davis-Bacon Wage Rate Requirements. See Section III, Paragraph 11, Option 1 (governmental entities) and Option 2 (non-governmental entities) for contract clauses required for Davis-Bacon requirements. This information is also included in TWDB Guidance DB-0156, as follows (Applicant = Owner (sub-recipient)):

- If the Owner (sub-recipient) is a governmental entity such as a city or district, it must insert in full the contract clauses found in TWDB Guidance [DB-0156](#), Appendix 1: Section 3, Section 4 (if the contract exceeds \$100,000), and Section 5.
- If the Owner (sub-recipient) is a non-governmental entity such as a water supply corporation or a private company, it must insert in full the contract clauses found in TWDB Guidance [DB-0156](#), Appendix 2: Section 3, Section 4 (if the contract exceeds \$100,000), and Section 5.

The Owner (sub-recipient) must ensure all prime contracts require the same full text in any subcontracts. See TWDB Guidance [DB-0156](#) for the text of the contract language that must be included.

Additional information on Davis-Bacon Wage Rate Requirements and its applicability to this contract can be found in TWDB Guidance [DB-0156](#).

4. American Iron and Steel

Any contract(s) awarded under this Invitation for Bids (under the 2022 IUP or earlier) is/are subject to the American Iron and Steel (AIS) requirements of 33 U.S.C §1388 for Clean Water State Revolving Fund projects or Public Law 114-113, Consolidated Appropriations Act, 2016, or subsequent appropriations acts, for Drinking Water State Revolving Fund projects. The Contractor must complete the statement of understanding regarding this requirement, found in Supplemental Contract Conditions, Item No. 9. The statement of understanding must be signed by the Contractor.

5. Build America, Buy America (BABA) Act

Any contract(s) awarded under this Invitation for Bids (under the 2023 IUP or later) is subject to the Build America, Buy America (BABA) Act requirements of Section 70901 of P.L. 117-58 of the Bipartisan Infrastructure Law, 2021. The Contractor must complete the statement of understanding regarding this requirement, found in Supplemental Contract Conditions, Item No. 10. The statement of understanding must be signed by the Contractor.

6. Equal Employment Opportunity and Affirmative Action

All qualified applicants will receive consideration for employment.

7. Debarment and Suspension Certification

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

8. Bid Guarantee

Each bidder must furnish a bid guarantee equivalent to five percent (5%) of the bid price (Water Code 17.183). If a bid bond is provided, the Contractor must utilize a surety company that is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

9. Summary of Forms to be submitted with the Bid Documents:

- SRF-404, Certification Regarding Debarment, Suspension and Other Responsibility Matters, (to be completed and submitted by the sub-recipient).
- TWDB-0217, Texas Water Development Board Prime Consultant/Contractor Certification.

III. SUPPLEMENTAL CONTRACT CONDITIONS

1. Supersession

The Owner and the Contractor agree that the TWDB Supplemental Conditions apply to that work eligible for TWDB assistance to be performed under this construction contract and these clauses supersede any conflicting provisions of this contract.

2. Privity of Contract

Funding for this project is expected to be provided in part by the TWDB. Neither the State of Texas, nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to applicable provisions 31 TAC Chapter 371 (DWSRF) or 375 (CWSRF) in effect on the date of the assistance award for this project.

3. Definitions

- (a) The terms "Owner" or "Applicant" means the local entity contracting for the construction services.
- (b) The term "TWDB" means the Executive Administrator of the Texas Water Development Board, or other person who may be at the time acting in the capacity or authorized to perform the functions of such Executive Administrator, or the authorized representative thereof.
- (c) The term "Engineer" means the engineer the Owner has authorized to work on the project.

4. Laws to be Observed

In the execution of the Contract, the Contractor must comply with all applicable Local, State and Federal laws, including but not limited to laws concerned with labor, safety, minimum wages, and the environment. The Contractor shall be familiar with and at all times must observe and comply with all Federal, State, and Local laws, ordinances and regulations which in any manner affect the conduct of the work, and must indemnify and save harmless the Owner, Texas Water Development Board, and their representatives against any claim arising from violation of any such law, ordinance or regulation by the Contractor, their Subcontractor or their employees.

5. Review by Owner and TWDB

- (a) The Owner, authorized representatives and agents of the Owner, EPA, and TWDB must, at all times have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract, provided, however that all instructions and approval with respect to the work will be given to the Contractor only by the Owner through authorized representatives or agents.
- (b) Any such inspection or review by the TWDB must not subject the State of Texas, or its representatives, to any action for damages.

6. Performance and Payment Bonds

Each Contractor awarded a construction contract must furnish performance and payment bonds that include the following explicit conditions in the body of the bond:

- (a) the performance bond must include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices;
- (b) the performance and payment bonds must be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the Engineer of the political subdivision; and
- (c) the Contractor must utilize a surety company which is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

7. Payment Schedule and Cost Breakdown

- (a) The Contractor must submit for approval immediately after execution of the Agreement, a carefully prepared Progress Schedule, showing the proposed dates of starting and completing each of the various sections of the work.
- (b) The following paragraph applies only to contracts awarded on a lump sum contract price:

COST BREAKDOWN - The Contractor must submit to the Owner a detailed breakdown of the estimated cost of all work to be accomplished under the contract, arranged and itemized as to meet the approval of the Owner or funding agencies. This breakdown must be submitted promptly after execution of the agreement and before any payment is made to the Contractor for the work performed under the contract. After approval by the Owner, the unit prices established in the breakdown must be used in estimating the amount of the partial payments to be made to the Contractor.

8. Workman's Compensation Insurance Coverage (as applicable, consistent with Texas Labor Code § 406.096)

- (a) The Contractor must certify in writing that the Contractor provides workers' compensation insurance coverage for each employee of the Contractor employed on the public project.
- (b) Each Subcontractor on the public project must provide such a certificate relating to coverage of the Subcontractor's employees to the general Contractor, who shall provide the Subcontractor's certificate to the governmental entity.
- (c) A Contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.
- (d) The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

(e) In this section:

- i. "Building or construction" includes:
 - erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
 - remodeling, extending, repairing, or demolishing a structure; or
 - otherwise improving real property or an appurtenance to real property through similar activities.
- ii. "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

9. American Iron & Steel

If BABA does not apply, then the following AIS statement must be completed by the Contractor and made a part of the agreement between the Owner and the Contractor. The statement must be on a dedicated page within the contract that includes the Contractor signature and date; or the Contractor can choose to sign and date this page of the TWDB-0550.

The Contractor acknowledges to and for the benefit of the Owner ("Purchaser") that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund or the Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel" that require all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification, or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner to enforce this Agreement and recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner resulting from any such failure (including without limitation attorney's fees incurred by the Owner resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the TWDB or any damages owed to the Owner).

Additional information on the American Iron and Steel (AIS) and its applicability to this contract can be found in the TWDB-1106 guidance.

The Owner must receive and maintain files documenting the Contractor's use of

AIS. Monthly compliance with AIS must be verified by the Owner through the submittal of the TWDB form TWDB-1106-A.

10. Build America, Buy America (BABA) Act

The following statement must be completed by the Contractor and made a part of the agreement between the Owner and the Contractor. The statement must be on a dedicated page within the contract that includes the Contractor signature and date; or the Contractor can choose to sign and date this page of the TWDB-0550:

The Contractor acknowledges to and for the benefit of the Owner (“Purchaser”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund or Drinking Water State Revolving Fund that have statutory requirements commonly known as “Build America, Buy America;” that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States (“Build America, Buy America Requirements”) including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Owner resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the TWDB or any damages owed to the Owner).

Additional information on the Build America, Buy America (BABA) Act and its applicability to this contract can be found in the TWDB-0559 guidance.

The Owner must receive and maintain files documenting the Contractor’s use of BABA. Monthly compliance with BABA must be verified by the Owner through the submittal of the TWDB form TWDB-1110-A.

11. Davis-Bacon Wage Rate Requirements

(a) Compliance Procedures

To be held in compliance and satisfy this federal requirement, the following must be fulfilled:

- i. **Wage Determinations** - U.S. Department of Labor (DOL) wage determination must be included in the bidding and contract documents. DOL wage determinations may be obtained online at <https://sam.gov/content/wage-determinations>. Once it is determined that Davis-Bacon wage rates will apply to a construction contract, the Owner must state in the solicitation that Davis-Bacon prevailing wage rates are applicable and bid packages must include the current Davis-Bacon general wage determination for the area where construction will occur (generally this is the project county). While the solicitation remains open, the Owner must monitor <https://sam.gov/content/wage-determinations> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The Owner must amend the solicitation if the DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Owner may request a finding from the TWDB that there is not a reasonable amount of time to notify interested Contractors of the modification of the wage determination.

If a contract is not awarded within 90 days after bid opening, any revised general wage determination issued prior to award of the contractor is effective for that contract; unless the TWDB, at the request of the Owner, requests and obtains an extension of the 90-day period from DOL ([29 CFR 1.6\(c\)\(2\)\(ii\)\(D\)](#)).

Wage determinations must be updated after contract award when (1) the contract has a change order that adds substantial construction, alternation, or repair work not within the original scope and the contract time is extended, or (2) the contract is a "work order" type contract (a general commitment to construction as the need arises, but exact construction is not necessarily specified). For "work order" type contracts, the most recent revision(s) of any applicable wage determination(s) on each anniversary date of the contract's award (or each anniversary date of the beginning of construction when there is no award). ([29 CFR 1.6\(c\)\(2\)\(iii\)](#))

- ii. **Insert wage rate requirements in full for all contracts and subcontracts in excess of \$2,000** - If the Owner is a governmental entity such as a city or district, it must insert in full the contract clauses shown herein as Option 1: Section 3, Section 4 (if the contract exceeds \$100,000), and Section 5. If the Owner is a non-governmental entity such as a water supply corporation or a private company, it must insert in full the contract clauses shown herein as Option 2: Section 3, Section 4 (if the contract exceeds \$100,000), and Section 5.

The Owner must ensure all prime contracts require the same full text in any subcontracts. Davis Bacon applies regardless of whether the terms and

conditions are included or not in all contracts and subcontracts. **Include the following text in all contracts:** “By accepting this award, the EPA Subrecipient acknowledges and agrees to the terms and conditions provided in the [DBRA requirements for contractors](#).”

- iii. **Monthly Certification** – The Owner must complete and submit monthly a Davis Bacon Wage Rate Certificate of Compliance once construction has begun. (Use [Monthly Davis Bacon Wage Rate Certificate of Compliance Submittal by Owner \(Subrecipient\) DB-0154](#)).
- iv. **Contractor Payroll Requirements** - The Contractor is required to pay the prevailing wage rates on a weekly basis to laborers and mechanics in accordance with the requirements of [29 CFR 5.5](#), which are incorporated into the actual construction contract. Contractors/Subcontractors must furnish weekly a statement with respect to the wages paid to each employee during the preceding week. The signature by the contractor, subcontractor, or authorized officer/employee must be an original handwritten signature or a legally valid electronic signature (e.g., DocuSign). They may use the Department of Labor (DOL) Payroll Form WH-347 and weekly Statement of Compliance on the reverse, or their own payroll form with all of the same data elements as the DOL Payroll Form WH-347, and the TWDB’s form, [Statement of Compliance Certification by Contractor for SRF, DB-0155](#). The DOL Payroll Form WH-347 can be found under the forms section of this document or at the following link: www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification. (See [DOL Payroll Form WH-347](#))
- v. **Interviews** - The Owner must periodically interview a sufficient number of employees entitled to the Davis-Bacon prevailing wages to verify that Contractors or Subcontractors are paying the appropriate wage rates. All interviews must be conducted in confidence. The Owner must use Standard Form 1445 (SF 1445) found at the following link: https://www.gsa.gov/system/files/SF_1445.pdf or equivalent documentation to memorialize the interviews. The Owner must establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by Contractors or Subcontractors and the duration of the contract or subcontract. The Owner must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the Contractor or Subcontractor is not complying with Davis-Bacon. The Owner must immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. (See Section 5 of Option 1 [governmental entities] and Option 2 [non-governmental entities]).
- vi. **Payroll Records** - Certified payroll must be delivered by the Contractor or Subcontractor within seven (7) days after the regular payment date of the payroll period. Certified payroll records are required to be retained by the Owner and Contractor for three (3) years after completion of the construction project. The Owner must periodically conduct spot checks of a representative sample of weekly payroll data to verify that Contractors or Subcontractors are paying the appropriate wage rates. (See Section 5 of Options 1 and 2).

The payroll records must include the following: the name, Social Security number, last known address, telephone number, and email address of each laborer and mechanic; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

- vii. **Wage Rate Poster** – The Contractor must post the required Poster (WH-1321) and applicable wage rates at the construction site in a prominent and accessible place where it can be easily seen by the workers. The wage rate poster may be found at www.dol.gov/whd/programs/dbra/wh1321.htm. (See **[Davis-Bacon Wage Rate Poster, WH-1321](#)**)
- viii. **Report Violations** – The Owner must immediately report violations of the Davis-Bacon prevailing wage requirements to the EPA Davis-Bacon Coordinator listed in the assistance agreement and to the appropriate DOL WHD Office listed at <http://www.dol.gov/whd/america2.htm>.

(b) Subcontracts

The Contractor will insert in full the required wage rate requirement in any subcontract in excess of \$2,000 as specified in (a)(ii) of this section. Davis Bacon applies regardless of whether the terms and conditions are included or not in all contracts and subcontracts. **Include the following text in all contracts:** “By accepting this award, the EPA Subrecipient acknowledges and agrees to the terms and conditions provided in the [DBRA requirements for contractors](#).”

(c) Davis-Bacon General Wage Determinations

A "wage determination" is the listing of wage and fringe benefit for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the U.S. DOL has determined to be prevailing in a given area for a construction. In general, the project area is the county where the project will take place. For the type of construction, the Davis-Bacon Wage Determinations are classified by the nature of the construction projects performed, specifically listed as "schedules": residential, building, highway, and heavy construction. A brief outline of the definitions for each schedule is listed below.

Construction Type: Residential determination

This determination includes the construction, alteration or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.

Construction Type: Building determination

This determination includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment

or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be "habitable" to be building construction. Also, the installation of heavy machinery and/or equipment does not generally change the project's character as a building.

Construction Type: Highway determination

This determination includes construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

Construction Type: Heavy determination

This determination includes those projects that are not properly classified as either "building," "highway," or "residential." Unlike these classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

The Owner should review their Contractor's wage decisions and confirm they provide an adequate classification of the labor required for the specific construction contract. Most CWSRF and DWSRF projects will fall under the "Heavy" construction type, but Owners should ask their Consulting Engineers if unsure.

Some contracts or projects may require more than one general schedule to be included depending on the nature and extent of the work (i.e. a building is constructed in a water treatment facility). This is described in more detail in DOL's All Agency Memorandum 130 with Addendum 131. See the DOL's website <http://www.dol.gov/whd/programs/dbra/memorand.htm>. In such cases, the contracting agency must incorporate the applicable wage determination for each type of construction involved that is anticipated to be substantial. The contracting agency is responsible for designating the specific work for which each incorporated wage determination applies (([29 CFR 1.6\(b\)\(1\)](#))). The contracting agency should designate the work or part thereof applies per Federal Acquisition Regulations (FAR) 22.404-2 thru 404-3 (www.acquisition.gov/far/22.404-2). Should overlaps occur in the wage classification schedules for the contract(s), the Owner may consider adopting the higher rate classification.

In all cases, the Owner is responsible to ensure an adequate classification is provided for compliance with the law. Where Contractors alert the Owner that the classification is inadequate, the Owner should work with the Contractor and the DOL to address any valid concerns.

All questions regarding Davis-Bacon guidance can be directed to: U.S. Department of Labor Wage and Hour Division 1-866-4USWAGE (1-866-487-9243), TTY: 1-877-889-5627, Monday-Friday 8 a.m. to 8 p.m. Eastern Time.

If you require further information about Davis-Bacon and how to apply it to your project, please contact the Texas Water Development Board [Regional Water Project Development \(RWPD\) Team Manager for your region](#).

The Owner and Contractor may obtain additional information on the Davis-Bacon Wage Rates requirements in the TWDB's Guidance [DB-0156 – "Guidance on Davis-Bacon Wage Rate Requirements"](#).

Option 1 – Applies to Governmental Entities (such as Cities and Districts)

1. Applicability of the Davis-Bacon and Related Acts Prevailing Wage Requirements.

Davis-Bacon and Related Acts (DBRA) prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by the Clean Water State Revolving Fund and to any construction project carried out in whole or in part by assistance made available by the Drinking Water State Revolving Fund. If an Owner encounters a unique situation at a site that presents uncertainties regarding DBRA applicability, the Owner must discuss the situation with the TWDB before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Owners shall obtain the wage determination for the locality in which a covered activity subject to DBRA will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DBRA. These wage determinations must be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that Subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the Owner shall monitor <https://sam.gov/content/wage-determinations> weekly to ensure that the wage determination contained in the solicitation remains current. The recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the TWDB that there is not a reasonable time to notify interested contractors of the modification of the wage determination. In the request, the subrecipient shall include documentation of the bid date and time and the DOL wage modification date. The TWDB will review the documentation and provide a report of its findings to the subrecipient. The subrecipient shall keep the report in the project contract file.
- (ii) If the Owner does not award the contract within 90 days of the bid opening, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the TWDB, at the request of the

Owner, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Owner shall monitor <https://sam.gov/content/wage-determinations> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the Owner carries out activity subject to DBRA by issuing a task order, work assignment or similar instrument to an existing Contractor (ordering instrument) rather than by publishing a solicitation, the Owner must insert the appropriate DOL wage determination from <https://sam.gov/content/wage-determinations> into the ordering instrument. For “work order” type contracts, the most recent revision(s) of any applicable wage determination(s) on each anniversary date of the contract’s award (or each anniversary date of the beginning of construction when there is no award). ([29 CFR 1.6\(c\)\(2\)\(iii\)](#))

(c) Owners must review all subcontracts subject to DBRA entered into by Prime Contractors to verify that the prime Contractor has required its Subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to an Owner’s contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Owner has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Owner must either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL’s wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Owner’s Contractor must be compensated for any increases in wages resulting from the use of DOL’s revised wage determination.

3. Contract and Subcontract provisions.

The subrecipient must insert in full in any contract to which Davis-Bacon and Related Acts apply, the following clauses. Reference to www.epa.gov/grants/contract-provisions-davis-bacon-and-related-acts and [29 CRF 5.5](#).

The Contractor acknowledges that by entering into this contract with a contracting agency, funded by an EPA Assistance agreement (grant), the Contractor agrees to comply with the following terms and conditions in accordance with 29 CFR 5.5, if this contract is for activities covered under Davis-Bacon and Related Acts (DBRA) and exceeds (or will exceed) \$2,000. Definitions for many of the terms used below are provided in 29 CFR 5.2.

(1) Minimum wages.

(i) Wage rates and fringe benefits

All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than

those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of [29 CFR 5.5\(a\)\(1\)\(v\)](#) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in [29 CFR 5.5\(a\)\(4\)](#).

Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under [29 CFR 5.5\(a\)\(1\)\(iii\)](#) of this section) and the [Davis-Bacon poster \(WH-1321\)](#) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Frequently recurring classifications

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR Part 1, a wage determination may contain, pursuant to [29 CFR 1.3\(f\)](#), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to [29 CFR 5.5\(a\)\(1\)\(iii\)](#), provided that:

- (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
- (2) The classification is used in the area by the construction industry; and
- (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with [29 CFR 5.5\(a\)\(1\)\(iii\)\(A\)\(3\)](#) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) Conformance

(A) The contracting officer must require that any class of laborers or mechanics,

including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is used in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to the TWDB. The TWDB will transmit the request to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TWDB will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the contractor of the action taken by the [Wage and Hour Division under paragraphs \(a\)\(1\)\(iii\)\(C\) and \(D\)](#) of this section. The contractor must furnish a written copy of such determination to each affected worker, or it must be posted as part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) Fringe benefits not expressed as an hourly rate

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

(v) Unfunded plans

If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in [29 CFR 5.28](#), that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) Interest

In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) Withholding.

(i) Withholding requirements

The EPA, grant recipient, subrecipient at any tier, and/or contracting agency upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in [29 CFR 5.2](#)).

The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in [29 CFR 5.5\(a\)\(3\)\(iv\)](#) of this section, the **EPA, grant recipient, subrecipient at any tier, and/or contracting agency** may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) Priority to withheld funds

The Department has priority to funds withheld or to be withheld in accordance with [29 CFR 5.5\(a\)\(2\)\(i\)](#) or [29 CFR 5.5\(b\)\(3\)\(i\)](#) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its procurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

(3) Records and certified payrolls

(i) Basic record requirements

(A) Length of record retention

All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least three (3) years after all the work on the prime contract is completed.

(B) Information required

Such records must contain the name; Social Security number; last known address, telephone number, and email of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) Additional records relating to fringe benefits

Whenever the Secretary of Labor has found under [29 CFR 5.5\(a\)\(1\)\(v\)](#) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) Additional records relating to apprenticeship.

Contractors with apprentices working under approved programs must maintain written evidence of the apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) Certified payroll requirements

(A) Frequency and method of submission

The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts- covered work is performed, certified payrolls to the **contracting agency** if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the **contracting agency**. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least three (3) years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(B) Information required

The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under [29 CFR 5.5\(a\)\(3\)\(i\)\(B\)](#), except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on the weekly transmittals. Instead the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

(C) Statement of Compliance

Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(1) That the certified payroll for the payroll period contains the information required to be provided under [29 CFR 5.5\(a\)\(3\)\(iii\)](#), and such information and records are correct and complete;

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

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

(D) Use of Optional Form WH-347

The weekly submission of a properly executed certification set forth on the reverse side of [Optional Form WH-347](#) shall satisfy the requirement for submission of the "Statement of Compliance" required by [29 CFR 5.5\(a\)\(3\)\(ii\)\(C\)](#).

(E) Signature

The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) Falsification

The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(G) Length of certified payroll retention

The contractor or subcontractor must preserve all certified payrolls during the course of the work for a period of three (3) years after all the work on the prime contract is completed.

(iii) Contracts, subcontracts, and related documents

The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of three (3) years after all the work on the prime contract is completed.

(iv) Required disclosures and access

(A) Required record disclosure and access to workers

The contractor or subcontractor must make the records required under paragraph (a)(3)(i) through (iii) of this section, and any other documents that the **EPA**,

recipient, or subrecipient at any tier, and/or contracting agency, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable [29 CFR 5.1](#), available for inspection, copying, or transcription by authorized representatives of the **TWDB, EPA, recipient, or subrecipient at any tier, and/or contracting agency**, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) Sanctions for non-compliance with records and worker access requirements

If the contractor or subcontractor fails to submit the required records or to make them available, or refuse to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to [29 CFR 5.12](#). In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) Required information disclosures

Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the Environmental Protection Agency if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the EPA, recipient, or subrecipient at any tier, contracting agency, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) Apprentices and Equal Employment Opportunity

(i) Apprentices

(A) Rate of pay

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S.

Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Fringe benefits

Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) Apprenticeship ratio

The allowable ratio of apprentices to journey workers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to [29 CFR 5.5\(a\)\(4\)\(i\)\(D\)](#). Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in [29 CFR 5.5\(a\)\(4\)\(i\)\(A\)](#), must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) Reciprocity of ratios and wage rates

Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journey worker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) Equal employment opportunity

The use of apprentices and journey workers under this part must be in conformity with [29 CFR part 30](#).

(5) Is reserved.

(6) Subcontracts

The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section or a link to the **DBRA Requirements for Contractors and Subcontractors Under EPA Grants** document on EPA's

[Contract Provisions for Davis-Bacon and Related Acts](#) webpage, along with the applicable wage determination(s) and such other clauses or contract modifications as the Environmental Protection Agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The Prime Contractor is responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the Prime Contractor and any Subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier Subcontractors, and may be subject to debarment, as appropriate.

(7) – (9) are reserved.

(10) Certificate of Eligibility

- (i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).
- (iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

(11) Anti-Retaliation

It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);
- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

4. Contract Provision for Contracts in Excess of \$100,000.

For contracts over \$100,000, additional Terms and Conditions apply. The DBRA Requirements for Contracts in Excess of \$100,000 Under EPA Grants document is available on EPA's [Contract Provisions for Davis-Bacon and Related Acts](#) webpage provides the additional requirements provided under [29 CFR 5.5](#). This information is included as follows:

(b) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by [29 CFR 5.5\(a\)](#), above or [29 CFR 4.6](#). As used in this paragraph, the terms “laborers and mechanics” include watchmen and guards.

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in [29 CFR 5.5\(b\)\(1\)](#) the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in [29 CFR 5.5\(b\)\(1\)](#), in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in [29 CFR 5.5\(b\)\(1\)](#).

(3) Withholding for unpaid wages and liquidated damages.

(i) Withholding process. The subrecipient may, upon its own action, or must upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this [29 CFR 5.5\(b\)](#) on this contract, any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, that is held by the same prime contractor (as defined in [29 CFR 5.2](#)). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with [29 CFR 5.5\(a\)\(2\)\(i\)](#) or [29 CFR 5.5\(b\)\(3\)\(i\)](#) of this section, or both, over claims to those funds by:

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its procurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

(4) Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in [29 CFR 5.5\(b\)\(1\)](#) through [\(5\)](#) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in [29 CFR 5.5\(b\)\(1\)](#) through [\(5\)](#). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- (iv) Informing any other person about their rights under CWHSSA or this part.

(c) CWHSSA required records clause. In addition to the clauses contained in [29 CFR 5.5\(b\)](#), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by [29 CFR 5.1](#), the Subrecipient must insert a clause requiring that the contractor or subcontractor must maintain payrolls and basic records during the course of the work and must preserve them for a period of three (3) years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each workers' correct classification(s) of work actually

performed, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient must insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the EPA, the TWDB, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(d) Incorporation of contract clauses and wage determinations by reference. Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

(e) Incorporation by operation of law. The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by [29 CFR 5.1](#) to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

5. Compliance Verification and Enforcement

(a) Agency responsibilities.

(1)(i) The Federal agency has the initial responsibility to ascertain whether the clauses required by [29 CFR 5.5](#) and the appropriate wage determination(s) have been incorporated into the contracts subject to the labor standards provisions of the laws referenced by [29 CFR 5.1](#). Additionally, a Federal agency that provides Federal financial assistance that is subject to the labor standards provisions of the Act must promulgate the necessary regulations or procedures to require the recipient or subrecipient of the Federal assistance to insert in its contracts the provisions of [29 CFR 5.5](#). No payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency unless it ensures that the clauses required by [29 CFR 5.5](#) and the appropriate wage determination(s) are incorporated into such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency after the beginning of construction unless there is on file with the Federal agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of [29 CFR 5.5](#) or unless there is on file with the Federal agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(ii) If a contract subject to the labor standards provisions of the applicable statutes referenced by [29 CFR 5.1](#) is entered into without the incorporation of the clauses required by [29 CFR 5.5](#), the agency must, upon the request of the Administrator or upon its own initiative, either terminate and resolicit the contract with the required

contract clauses, or incorporate the required clauses into the contract (or ensure they are so incorporated) through supplemental agreement, change order, or any and all authority that may be needed. Where an agency has not entered directly into such a contract but instead has provided Federal financial assistance, the agency must ensure that the recipient or sub-recipient of the Federal assistance similarly incorporates the clauses required into its contracts. The method of incorporation of the correct wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable law. Additionally, the following requirements apply:

(A) Unless the Administrator directs otherwise, the incorporation of the clauses required by [29 CFR 5.5](#) must be retroactive to the date of contract award or start of construction if there is no award.

(B) If this incorporation occurs as the result of a request from the Administrator, the incorporation must take place within 30 days of the date of that request, unless the agency has obtained an extension from the Administrator.

(C) The contractor must be compensated for any increases in wages resulting from incorporation of a missing contract clause.

(D) If the recipient refuses to incorporate the clauses as required, the agency must make no further payment, advance, grant, loan, or guarantee of funds in connection with the contract until the recipient incorporates the required clauses into its contract, and must promptly refer the dispute to the Administrator for further proceedings under [29 CFR 5.13](#).

(E) Before terminating a contract pursuant to this section, the agency must withhold or cross-withhold sufficient funds to remedy any back wage liability resulting from the failure to incorporate the correct wage determination or otherwise identify and obligate sufficient funds through a termination settlement agreement, bond, or other satisfactory mechanism.

(F) Notwithstanding the requirement to incorporate the contract clauses and correct wage determination within 30 days, the contract clauses and correct wage determination will be effective by operation of law, retroactive to the beginning of construction, in accordance with [29 CFR 5.5\(e\)](#).

(2) (i) Certified payrolls submitted pursuant to [29 CFR 5.5\(a\)\(3\)\(ii\)](#) must be preserved by the Federal agency for a period of three (3) years after all the work on the prime contract is completed, and must be produced at the request of the Department of Labor at any time during the 3-year period, regardless of whether the Department of Labor has initiated an investigation or other compliance action.

(ii) In situations where the Federal agency does not itself maintain certified payrolls required to be submitted pursuant to [29 CFR 5.5\(a\)\(3\)\(ii\)](#), upon the request of the Department of Labor the Federal agency must ensure that such certified payrolls are provided to the Department of Labor. Such certified payrolls may be provided by the applicant, sponsor, owner, or other entity, as the case may be, directly to the Department of Labor, or to the Federal agency which, in turn, must provide those records to the Department of Labor.

(3) The Federal agency will cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by [29 CFR 5.5](#) and the applicable statutes referenced in [29 CFR 5.1](#). Investigations will be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations will include interviews with workers, which must be taken in confidence, and examinations of certified payrolls, regular payrolls, and other basic records required to be maintained under [29 CFR 5.5\(a\)\(3\)](#). In making such examinations, particular care must be taken to determine the correctness of classification(s) of work actually performed, and to determine whether there is a disproportionate amount of work by laborers and of apprentices registered in approved programs. Such investigations must also include evidence of fringe benefit plans and payments thereunder. Federal agencies must give priority to complaints of alleged violations.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages, liquidated damages, and monetary relief for violations of [29 CFR 5.5\(a\)\(11\)](#) or [\(b\)\(5\)](#), and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(b) Department of Labor Investigations and other compliance actions.

(1) The Administrator will investigate and conduct other compliance actions as deemed necessary in order to obtain compliance with the labor standards provisions of the applicable statutes referenced by [29 CFR 5.1](#), or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes referenced by [29 CFR 5.1](#).

(2) Federal agencies, contractors, subcontractors, sponsors, applicants, owners, or other entities, as the case may be, must cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations or other compliance actions.

(3) The findings of such an investigation or other compliance action, including amounts found due, may not be altered or reduced without the approval of the Department of Labor.

(4) Where the underpayments disclosed by such an investigation or other compliance action total \$1,000 or more, where there is reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, or where liquidated damages may be assessed under CWHSSA, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation or other compliance action and any action taken by the contractor or subcontractor to correct the violations, including any payment of back wages or any other relief provided workers or remedial actions taken for violations of [29 CFR 5.5\(a\)\(11\)](#) or [\(b\)\(5\)](#). In other circumstances, the Department of Labor will furnish the Federal agency a notification summarizing the findings of the investigation or other compliance action.

(c) Confidentiality requirements. It is the policy of the Department of Labor to protect from disclosure the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of a worker or other informant who makes a written or oral statement as a complaint or in the course of an investigation or other compliance action, as well as portions of the statement which would tend to reveal the identity of the informant, will not be disclosed in any manner to anyone other than Federal officials without the prior consent of the informant. Disclosure of such statements is also governed by the provisions of the "Freedom of Information Act" ([5 U.S.C. 552](#), see part 70 of this subtitle) and the "Privacy Act of 1974" ([5 U.S.C. 552a](#), see part 71 of this subtitle).

Option 2 – Applies to Non-Governmental Entities (such as Water Supply Corporations and Private Companies)

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements.

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the TWDB before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Owner must obtain proposed wage determinations for specific localities at <https://sam.gov/content/wage-determinations>. After the Owner obtains its proposed wage determination, it must submit the wage determination to the TWDB for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the TWDB.)

(b) Owner shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the Owner shall monitor <https://sam.gov/content/wage-determinations> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the TWDB that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The TWDB will provide a report of its findings to the subrecipient.

(ii) If the Owner does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the TWDB, at the request of the Owner, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Owner shall monitor <https://sam.gov/content/wage-determinations> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the Owner carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing Contractor (ordering instrument) rather than by publishing a solicitation, the Owner shall insert the appropriate DOL wage determination from <https://sam.gov/content/wage-determinations> into the ordering instrument.

(d) Owners shall review all subcontracts subject to DB entered into by prime Contractors to verify that the prime Contractor has required its Subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to an Owner's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Owner has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Owner shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Owner's Contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

The subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in [29 CFR 5.1](#), the following clauses:

(1) Minimum wages.

(i) Wage rates and fringe benefits.

All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual

relationship which may be alleged to exist between the contractor and such laborers and mechanics.

As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(v); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(iii)) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, <https://sam.gov/content/wage-determinations>.

(ii) Frequently recurring classifications.

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR Part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to 29 CFR Part 5.5(a)(1)(iii), provided that:

- (1) The work to be performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with 29 CFR 5.5(a)(1)(iii)(A)(3). Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) Conformance.

(A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is used in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Owner(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the Owner(s) to the TWDB. The TWDB will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor via email to DBAconformance@dol.gov, and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Owner(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TWDB will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the TWDB, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under [29 CFR 5.5\(a\)\(1\)\(iii\)\(C\)](#) and [\(D\)](#). The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to [29 CFR 5.5\(a\)\(1\)\(iii\)\(C\)](#) and [\(D\)](#) must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(v) Unfunded plans. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, in accordance with the criteria set forth in [§ 5.28](#), that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) Interest. In the event of a failure to pay all or part of the wages required by the contract, the Contractor will be required to pay interest on any underpayment of wages.

(2) Withholding

(i) Withholding requirements. The Owner(s) may, upon its own action or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor, so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the Prime Contractor or any Subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in [29 CFR 5.5\(a\)](#) for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same Prime Contractor (as defined in [§ 5.2](#)). The necessary funds may be withheld from the Contractor under this contract, any other Federal contract with the same Prime Contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same Prime Contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the Contractor liability for which the funds were withheld. In the event of a Contractor's failure to pay laborers and mechanics, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the Contractor's failure to submit the required records as discussed in [29 CFR 5.5\(a\)\(3\)\(iv\)](#), the EPA may, on its own initiative and after written notice to the Contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with [29 CFR \(a\)\(2\)\(i\)](#) or [\(b\)\(3\)\(i\)](#), or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its procurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

(3) Records and certified Payrolls.

(i) Basic Record requirements.

(A) Length of record retention. All regular payrolls and other basic records must be maintained by the Contractor any Subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise work in construction or development of the project under a development statute) for a period of at least three (3) years after all the work on the prime contract is completed.

(B) Information required. Such records shall contain the name, last known address, Social Security Number, telephone number, and email address of each such worker, each worker's correct classification(s) of work actually performed, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act), daily and weekly number of hours actually worked in total and on each covered contract, deductions made, and actual wages paid.

(C) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under [29 CFR 5.5\(a\)\(1\)\(v\)](#) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the Contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) Certified payroll requirements.

(A) Frequency and method of submission. The Contractor or Subcontractor must submit weekly, for each week in which any DBA-or Related Acts-covered work is performed, certified payrolls to the Owner, that is, the entity that receives the funds from the TWDB. The Prime Contractor is responsible for the submission of all certified payrolls by Subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature (e.g., DocuSign); the system allows the Contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least three (3) years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system. Such documentation shall be available on request of the TWDB or EPA.

(B) Information required. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under [29 CFR 5.5\(a\)\(3\)\(i\)\(B\)](#), except that full Social Security Numbers and last known addresses, telephone numbers, and email addresses must not be included on the weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the employee's social security number). The required weekly certified payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division (WHD) Web site at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor site. It is not a violation of this section for a Prime Contractor to require a Subcontractor to provide full Social Security Numbers and last known addresses, telephone numbers, and email addresses to the Prime Contractor for its own records, without weekly submission by the Subcontractor to the TWDB (or the applicant, sponsor, owner, or other entity as the case may be, that maintains such records).

(C) Statement of Compliance. Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or their agent who pays or supervises the payment of the persons working on the contract and must certify the following:

(1) That the certified payroll for the payroll period contains the information required to be provided under [29 CFR 5.5 \(a\)\(3\)\(ii\)](#), the appropriate information and basic records are being maintained under [29 CFR 5.5 \(a\)\(3\)\(i\)](#), and that such information and records are correct and complete;

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

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

(D) Use of the Optional Form WH-347. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph [29 CFR 5.5\(a\)\(3\)\(ii\)\(C\)](#).

(E) Signature. The signature by the Contractor, Subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature (e.g DocuSign).

(F) Falsification. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [section 1001 of title 18](#) and [section 3729 of title 31](#) of the United States Code.

(G) Length of certified payroll retention. The Contractor or Subcontractor must preserve all certified payrolls during the course of the work and for a period of three (3) years after all the work on the prime contract is completed.

(iii) Contracts, subcontracts, and related documents. The Contractor or Subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The Contractor or Subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of three (3) years after all the work on the prime contract is completed.

(iv) Required disclosures and access.

(A) Required record disclosures and access to workers. The Contractor or Subcontractor must make the records required under [29 CFR 5.5 \(a\)\(3\)\(i\)](#) through [\(iii\)](#), and any other documents that the EPA or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by [§ 5.1](#), available for inspection, copying, or transcription by authorized representatives of the TWDB, EPA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) Sanctions for non-compliance with records and worker access requirements. If the Contractor or Subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to [29 CFR 5.12](#). In addition, any Contractor or other person that fails to submit the required records or make those records available to WHD within

the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) Required information disclosures. Contractors and Subcontractors must maintain the full Social Security Number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the EPA if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the Contractor, Subcontractor, or both, must, upon request, provide the full Social Security Number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the TWDB, EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) Apprentices and equal employment opportunity

(i) Apprentices.

(A) Rate of pay. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Fringe benefits. Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) Apprenticeship ratio. The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to [29 CFR 5.5\(a\)\(4\)\(i\)\(D\)](#) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in [29 CFR 5.5\(a\)\(4\)\(i\)\(A\)](#) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) Reciprocity of ratios and wage rates. Where a Contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) applicable within the locality in which construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the Contractor's registered program must be observed.

(ii) Equal employment opportunity. The use of apprentices and journeymen under this part must be in conformity with [29 CFR part 30](#).

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of [29 CFR part 3](#), which are incorporated by reference in this contract.

(6) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in [29 CFR 5.5\(a\)\(1\)](#) through (11) along with the applicable wage determination(s) and such other clauses or contract modifications as the EPA determines may by appropriate instructions require, and a clause requiring the Subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The Prime Contractor is responsible for the compliance by any Subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5. In the event of any violations of these clauses, the Prime Contractor and any Subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(7) Contract termination; debarment. A breach of the contract clauses in [29 CFR 5.5](#) may be grounds for termination of the contract, and for debarment as a Contractor and a Subcontractor as provided in [29 CFR 5.12](#).

(8) Compliance with Davis-Bacon and Related Acts requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in [29 CFR parts 1, 3, and 5](#) are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in [29 CFR parts 5, 6, and 7](#). Disputes within the

meaning of this clause include disputes between the contractor (or any of its subcontractors) and Owner(s), the TWDB, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the Contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or [29 CFR 5.12\(a\)](#).

(ii) No part of this contract shall be Subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or [29 CFR 5.12\(a\)](#).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#)

(11) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any Contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

4. Contract Provision for Contracts in Excess of \$100,000

(b) Contract Work Hours and Safety Standards Act. The Owner shall insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by [29 CFR 5.5\(a\)](#) or [29 CFR 4.6](#). As used in this paragraph, the terms "laborers and mechanics" include watchmen and guards.

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in [29 CFR 5.5\(b\)\(1\)](#) the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such Contractor and Subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in [29 CFR 5.5\(b\)\(1\)](#), in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in [29 CFR 5.5\(b\)\(1\)](#).

(3) Withholding for unpaid wages and liquidated damages.

(ii) Withholding process. The Owner may, upon its own action, or must upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the Prime Contractor or any Subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in [29 CFR 5.5\(b\)](#), any other Federal contract with the same Prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, that is held by the same Prime Contractor (as defined in [29 CFR 5.2](#)). The necessary funds may be withheld from the Contractor under this contract, any other Federal contract with the same Prime Contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with [29 CFR 5.5\(a\)\(2\)\(i\)](#) or [29 CFR 5.5\(b\)\(3\)\(i\)](#) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

(4) Subcontracts. The Contractor or Subcontractor must insert in any subcontracts the clauses set forth in [29 CFR 5.5\(b\)\(1\)](#) through [\(5\)](#) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Prime

Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in [29 CFR 5.5\(b\)\(1\)](#) through [\(5\)](#). In the event of any violations of these clauses, the Prime Contractor and any Subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

(iv) Informing any other person about their rights under CWHSSA or this part.

(c) CWHSSA required records clause. In addition to the clauses contained in [29 CFR 5.5\(b\)](#), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by [29 CFR 5.1](#), the Owner must insert a clause requiring that the Contractor or Subcontractor must maintain payrolls and basic records during the course of the work and must preserve them for a period of three (3) years after all the work on the Prime Contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and Social Security Number of each such worker; each workers' correct classification(s) of work actually performed, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Owner must insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the EPA, the TWDB, and the Department of Labor, and the Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.

(d) Incorporation of contract clauses and wage determinations by reference. Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and Contractors and Subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

(e) Incorporation by operation of law. The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by [29 CFR 5.1](#) to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

5. Compliance Verification and Enforcement

(a) Agency responsibilities.

(1)(i) The Federal agency has the initial responsibility to ascertain whether the clauses required by [29 CFR 5.5](#) and the appropriate wage determination(s) have been incorporated into the contracts subject to the labor standards provisions of the laws referenced by [29 CFR 5.1](#). Additionally, a Federal agency that provides Federal financial assistance that is subject to the labor standards provisions of the Act must promulgate the necessary regulations or procedures to require the recipient or sub-recipient of the Federal assistance to insert in its contracts the provisions of [29 CFR 5.5](#). No payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency unless it ensures that the clauses required by [29 CFR 5.5](#) and the appropriate wage determination(s) are incorporated into such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency after the beginning of construction unless there is on file with the Federal agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of [29 CFR 5.5](#) or unless there is on file with the Federal agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(ii) If a contract subject to the labor standards provisions of the applicable statutes referenced by [29 CFR 5.1](#) is entered into without the incorporation of the clauses required by [29 CFR 5.5](#), the agency must, upon the request of the Administrator or upon its own initiative, either terminate and resolicit the contract with the required contract clauses, or incorporate the required clauses into the contract (or ensure they are so incorporated) through supplemental agreement, change order, or any and all authority that may be needed. Where an agency has not entered directly into such a contract but instead has provided Federal financial assistance, the agency must ensure that the recipient or sub-recipient of the Federal assistance similarly incorporates the clauses required into its contracts. The method of incorporation of the correct wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable law. Additionally, the following requirements apply:

(A) Unless the Administrator directs otherwise, the incorporation of the clauses required by [29 CFR 5.5](#) must be retroactive to the date of contract award or start of construction if there is no award.

(B) If this incorporation occurs as the result of a request from the Administrator, the incorporation must take place within 30 days of the date of that request, unless the agency has obtained an extension from the Administrator.

(C) The contractor must be compensated for any increases in wages resulting from incorporation of a missing contract clause.

(D) If the recipient refuses to incorporate the clauses as required, the agency must make no further payment, advance, grant, loan, or guarantee of funds in connection with the contract until the recipient incorporates the required clauses into its contract, and must promptly refer the dispute to the Administrator for further proceedings under [29 CFR 5.13](#).

(E) Before terminating a contract pursuant to this section, the agency must withhold or cross-withhold sufficient funds to remedy any back wage liability resulting from the failure to incorporate the correct wage determination or otherwise identify and obligate sufficient funds through a termination settlement agreement, bond, or other satisfactory mechanism.

(F) Notwithstanding the requirement to incorporate the contract clauses and correct wage determination within 30 days, the contract clauses and correct wage determination will be effective by operation of law, retroactive to the beginning of construction, in accordance with [29 CFR 5.5\(e\)](#).

(2) (i) Certified payrolls submitted pursuant to [29 CFR 5.5\(a\)\(3\)\(ii\)](#) must be preserved by the Federal agency for a period of three (3) years after all the work on the prime contract is completed, and must be produced at the request of the Department of Labor at any time during the 3-year period, regardless of whether the Department of Labor has initiated an investigation or other compliance action.

(ii) In situations where the Federal agency does not itself maintain certified payrolls required to be submitted pursuant to [29 CFR 5.5\(a\)\(3\)\(ii\)](#), upon the request of the Department of Labor the Federal agency must ensure that such certified payrolls are provided to the Department of Labor. Such certified payrolls may be provided by the applicant, sponsor, owner, or other entity, as the case may be, directly to the Department of Labor, or to the Federal agency which, in turn, must provide those records to the Department of Labor.

(3) The Federal agency will cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by [29 CFR 5.5](#) and the applicable statutes referenced in [29 CFR 5.1](#). Investigations will be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations will include interviews with workers, which must be taken in confidence, and examinations of certified payrolls, regular payrolls, and other basic records required to be maintained under [29 CFR 5.5\(a\)\(3\)](#). In making such examinations, particular care must be taken to determine the correctness of classification(s) of work actually performed, and to determine whether there is a disproportionate amount of work by laborers and of apprentices registered in approved programs. Such investigations must also include evidence of fringe benefit plans and payments thereunder. Federal agencies must give priority to complaints of alleged violations.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages, liquidated damages, and monetary relief for violations of [29 CFR 5.5\(a\)\(11\)](#) or [\(b\)\(5\)](#), and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(b) Department of Labor Investigations and other compliance actions.

(5) The Administrator will investigate and conduct other compliance actions as deemed necessary in order to obtain compliance with the labor standards provisions of the applicable statutes referenced by [29 CFR 5.1](#), or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes referenced by [29 CFR 5.1](#).

(6) Federal agencies, contractors, subcontractors, sponsors, applicants, owners, or other entities, as the case may be, must cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations or other compliance actions.

(7) The findings of such an investigation or other compliance action, including amounts found due, may not be altered or reduced without the approval of the Department of Labor.

(8) Where the underpayments disclosed by such an investigation or other compliance action total \$1,000 or more, where there is reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, or where liquidated damages may be assessed under CWHSSA, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation or other compliance action and any action taken by the contractor or subcontractor to correct the violations, including any payment of back wages or any other relief provided workers or remedial actions taken for violations of [29 CFR 5.5\(a\)\(11\)](#) or [\(b\)\(5\)](#). In other circumstances, the Department of Labor will furnish the Federal agency a notification summarizing the findings of the investigation or other compliance action.

(c) Confidentiality requirements. It is the policy of the Department of Labor to protect from disclosure the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of a worker or other informant who makes a written or oral statement as a complaint or in the course of an investigation or other compliance action, as well as portions of the statement which would tend to reveal the identity of the informant, will not be disclosed in any manner to anyone other than Federal officials without the prior consent of the informant. Disclosure of such statements is also governed by the provisions of the "Freedom of Information Act" ([5 U.S.C. 552](#), see part 70 of this subtitle) and the "Privacy Act of 1974" ([5 U.S.C. 552a](#), see part 71 of this subtitle).

12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Effective August 13, 2020, all recipients of CWSRF and DWSRF Equivalency funding, regardless of the date of the TWDB commitment, closing date, or Intended Use Plan, must comply with regulations at [2 CFR 200.216](#), ***Prohibition on certain telecommunication and video surveillance services or equipment***, implementing Section 889 of [Public Law 115-232](#).

The following must be included in *all* project construction contracts associated with equivalency assistance agreements. It must also be in any sub-contract that involves the purchase of telecommunications or video surveillance services or equipment.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.

As required by [2 CFR 200.216](#), EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with [2 CFR 200.471](#), costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

a. Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:

- (1) Procure or obtain, extend or renew a contract to procure or obtain;
- (2) Enter into a contract (or extend or renew a contract) to procure; or
- (3) Obtain the equipment, services, or systems.

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management (<https://sam.gov/content/home>) exclusion list.

Additional details:

Neither the TWDB nor the EPA have an exhaustive list of components and services that fall under the prohibition. The EPA recommends recipients be mindful of automatic meter reading (AMR) technology and advanced metering infrastructure (AMI), instrumentation control systems (e.g., process control systems, distributed control systems and programmable logic controls), and security cameras and other electronic security measures to ensure that those items are procured from a non-excluded entity. Items included in the prohibition are not eligible SRF costs and the TWDB SRF programs cannot reimburse recipients for these costs.

13. Payments

(a) Progress Payments:

i. The Contractor shall prepare their requisition for progress payment as of the last day of the payment month and submit it, with the required number of copies, to the Owner or Engineer for review. Except as provided in Paragraph (iii) of this subsection, the amount of the payment due to the Contractor shall be determined by:

- Adding to the total value of work completed to date,
- The value of materials properly stored on the site, and
- Deducting (1) five percent (5%) minimum of the total amount, as a retainage and (2) the amount of all previous payments.

The total value of work completed to date shall be based on the actual or estimated quantities of work completed and on the unit prices contained in the agreement (or cost breakdown approved pursuant to Section 7.b relating to lump sum bids) and adjusted by approved Change Orders. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoices prices.

Copies of all invoices shall be available for inspection by the TWDB.

ii. The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Owner. Such payments shall not constitute a waiver of the right of the Owner to require the fulfillment of all terms of the contract and the delivery of all improvements embraced in the contract complete and satisfactory to the Owner in all details.

iii. Only one of the following clauses applies:

- This clause applies to contracts when the Owner is a District or Authority. This clause applies to contracts when the Owner is a District or Authority. The retainage shall be a minimum of ten percent (10%) of the amount otherwise due until at least fifty (50%) of the work has been completed. After the project is fifty (50%) percent completed, and if the District or Authority's Board finds that satisfactory progress is being made, then the District may authorize any of the remaining progress payments to be made in full. The District is not obligated to pay interest earned on the first 50% of work completed (Texas Water Code Sec. 49.276(d)).
- This clause applies to contracts when the Owner is a Public Entity (i.e., not a District and not an Authority). The five (5%) percent retainage of the progress payments due to the Contractor may not be reduced until the building of the project is substantially complete and a reduction in the retainage has been authorized by the TWDB (Texas Water Code Sec. 17.183(a)(4)).

(b) Withholding Payments.

The Owner may withhold from any payment otherwise due to the Contractor so much as may be necessary to protect the Owner, and if so elects, may also withhold any amounts due from the Contractor to any Subcontractors or material dealers for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the Owner and will not require the Owner to determine or adjust any claims or disputes between the Contractor and Subcontractors or material dealers, or to withhold any monies for their protection unless the Owner elects to do so.

The failure or refusal of the Owner to withhold any monies from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this contract.

(c) Payments Subject to Submission of Certificates.

Each payment to the Contractor by the Owner shall be made subject to submission by the Contractor of all written certifications required of the Subcontractors by general and special conditions pertaining to this contract.

(d) Final Payment.

- i. Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract, the Contractor shall execute and deliver to the

Owner a release of all claims against the Owner arising under, or by virtue of, this contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the Owner's claims against the Contractor or his sureties under this contract or applicable performance and payment bonds.

- ii. After final inspection and acceptance by the Owner of all work under the contract, the Contractor shall prepare their requisition for final payment which shall be based upon the carefully measured or computed quantity of each item of work at the applicable unit prices stipulated in the Agreement or cost breakdown (if lump sum), as adjusted by approved Change Orders. The total amount of the final payment due to the Contractor under this contract shall be the amount computed as described above, less all previous payments.
- iii. The retainage and its interest earnings, if any, shall not be paid to the Contractor until the TWDB has authorized a reduction in, or release of, retainage on the contract work (see Item 24 Close-Out Procedures for additional information).
- iv. Withholding of any amount due to the Owner, under general or special conditions regarding "Liquidated Damages," shall be deducted from the final payment due the Contractor.

14. Equal Employment Opportunity and Affirmative Action

This provision applies to Clean Water State Revolving Fund Program and Drinking Water State Revolving Fund projects where the contract agreement is for more than \$10,000.

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other

employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (4) The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will maintain all information and reports by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with the rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals set for minority and female participation and which is set forth in the solicitations from which this contract resulted.

15. Debarment and Suspension

Equivalency DWSRF and CWSRF construction contracts are subject to the Title 40 Code of Federal Regulations Part 32 concerning Debarment and Suspension. The Contractor will comply with the assurances provided with the bid that led to this contract. The Contractor can use the Debarment/Suspension Certification ([SRF-404](#)) for self-certification. The Applicant/Owner must verify that the selected Contractor is not debarred or suspended by reviewing the www.sam.gov website. The Applicant/Owner can use the Debarment/Suspension Certification ([SRF-404](#)) for verification of a contractor's status. Both the Contractor and the Applicant/Owner must submit their Debarment/Suspension Certifications (SRF-404) to the TWDB Project Engineer/Reviewer.

Instructions for Certification

- (a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- (b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
- (c) The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- (d) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- (e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- (f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed

for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

- (h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (i) Except for transactions authorized under paragraph (e) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions.

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

16. State Revolving Fund Procurement Requirements

The TWDB Clean Water and Drinking Water State Revolving Fund programs receive federal funds from the U.S. Environmental Protection Agency (EPA). As a condition of federal grant awards, EPA regulations require that financial assistance recipients (Owners and Prime Contractors/Consultants) make a **"good faith efforts"** to award a fair share of contracts, subcontracts, and procurements in a nondiscriminatory manner whenever procuring **Construction and Non-Construction (supplies, services and equipment)**

Both the project Owner and Prime Consultants/Contractors must submit forms periodically to the TWDB to validate compliance with SRF Procurement requirements.

The Applicant (Owner) must submit form TWDB-0215 with the financial assistance application and be approved by the TWDB prior to Board consideration for any financial assistance commitment. Prime Contractors/Consultants must complete a TWDB-0217 form. The TWDB-0217 form will indicate if any subcontracting opportunities will be available or if the Prime Contractor/Consultant will be self-performing the contract.

For each construction contract, where the Prime Contractor is utilizing Subcontractors for the project, then the Prime Contractor is required to maintain its own documentation for procurement of Subcontractors prior to request for payment.

The following chart illustrates what forms are required for each type of contract:

Form	Phase (as applicable)	Completed by
TWDB-0215	Application	Owner
TWDB-0217	Closing (Procurement of Professional Services)	Prime Engineer, Financial Advisor, Bond Council, and/or any other professional services
	Planning & Design	Prime Engineer
	Construction	Prime Contractor

Note: All forms are to be submitted to the TWDB at the beginning of the applicable project phase.

The Prime Contractor/Consultant shall, if awarding subcontracts, to the extent appropriate, make a good faith effort to award a fair share of work by taking the following steps:

- a. Ensure contracting opportunities are posted with ample time to reply;
- b. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation;
- c. Establishing delivery schedules, where the requirements of the work permit, which will encourage participation; and
- d. Using the services and assistance of the Small Business Administration, Minority Business Development Agency of the U.S. Department of Commerce, and Texas Marketplace, as appropriate.

17. Archeological Discoveries and Cultural Resources

No activity which may affect properties listed or properties eligible for listing in the National Register of Historic Places or that are designated or eligible for designation as a State Archeological Landmark is authorized until the Owner has complied with the provisions of the National Historic Preservation Act and the Antiquities Code of Texas.

The Owner has previously coordinated with the appropriate agencies and impacts to known cultural or archeological deposits have been avoided or mitigated. However, the Contractor may encounter unanticipated cultural or archeological deposits during construction.

If archeological sites or historic structures which may qualify for designation as a State Archeological Landmark according to the criteria in 13 TAC Chapter 26, or that may be eligible for listing on the National Register of Historic Places in accordance with 36 CFR Part 800, are encountered after construction operations are begun, the Contractor must immediately cease operations in that particular area, avoid disturbance of the cultural resources, and notify the Owner, the TWDB, and the Texas Historical Commission, P.O. Box 12276, Capitol Station, Austin, Texas 78711.

The Contractor must take reasonable steps to protect and preserve the discoveries until they have been inspected by the Owner's representative and the TWDB. The Owner will promptly coordinate with the State Historic Preservation Officer, the Texas Historical Commission, and any other appropriate agencies to obtain any necessary approvals or permits to enable the work to continue. The Contractor must not resume work in the area of discovery until authorized to do so by the Owner.

18. Threatened and Endangered Species

No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), or the State of Texas Parks and Wildlife Code on threatened, endangered and state-listed species, or to destroy or adversely modify the habitat of such species.

If a threatened, endangered, or state-listed species is encountered during construction, the Contractor must immediately cease work in the area of the encounter, avoid disturbance of the animal or plant, and notify the TWDB and the Owner, who will immediately implement actions in accordance with the ESA and applicable State statutes. These actions must include reporting the encounter to the TWDB, the U. S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department, obtaining any necessary approvals or permits to enable the work to continue, and implementing other mitigation actions as directed. The Contractor must not resume construction in the area of the encounter until authorized to do so by the Owner.

19. Hazardous Materials

Materials utilized in the project must be free of any hazardous materials, except as may be specifically provided for in the specifications.

If the Contractor encounters existing hazardous material on sites owned or controlled by the Owner, or in material sources that are suspected by visual observation or smell to contain hazardous materials, the Contractor must immediately notify the Consulting Engineer and the Owner, who will immediately notify the TWDB and appropriate authorities, depending on the circumstances, such as local emergency responders, the Texas Commission on Environmental Quality (TCEQ), The U.S. Environmental Protection Agency (EPA), and others.

Unless otherwise directed by appropriate authorities, the Owner will be responsible for the testing and removal or disposal of hazardous materials on sites owned or controlled by the Owner, and may suspend work in the area of the encounter, wholly or in part, during testing, removal, or disposal operations.

Funding from the TWDB must not be used for sampling, testing, removing, or disposing of contaminated soils or media at the project site, except for an LSLR project or associated activity directly connected to the identification, planning, design, and replacement of lead service lines. The Obligations within the contract must include an environmental indemnification provision wherein the Owner/Applicant agrees, and agrees to cause its construction contractors, to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action, or damages arising from activities performed during the project funded by the TWDB, including their officials and employees, in connection with the project, to the extent permitted by law.

20. Project Signage

The Owner must implement one of the signage options below and keep records of proof of compliance as described in TWDB Project Public Awareness (PPA) Guidance ([TWDB-1109](#)); and submit the PPA Certification ([TWDB-1109-A](#)) with their initial construction outlay request:

- Online signage placed on community website or social media outlet;
- Press release;
- Posters or wall signage in a public building or location;
- Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility; or
- On-site signage erected in a prominent location at the construction project site or along a major thoroughfare within the community as directed by the Owner.

If the Owner decides on a public or media event to publicize the accomplishment of significant events related to construction of the project, the U.S. Environmental Protection Administration (EPA), Region 6, must be provided with at least a ten (10) working day notice of the event and provided the opportunity to attend and participate. Please contact Section Supervisor Denise Hamilton, who can be reached at (214) 665-2775 or Hamilton.Denise@epa.gov.

21. Changes

*Provisions identified with an asterisk below are consistent with Local Government Code 271.060. Counties and Municipalities may modify the identified provisions, when applicable, to conform to Local Government Code 262.031 (Counties) or 252.048 (Municipalities).

- (a) The Owner may at any time, without notice to any surety, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including but not limited to changes:
 - i. In the specifications (including drawings and designs);
 - ii. In the time, method, or manner of performance of the work;
 - iii. To decrease or increase the quantity of work to be performed or materials, equipment, or supplies to be furnished;
- (b) *The total price of a contract may not be increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.
- (c) *A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, subsequent change orders may not increase the revised

contract amount by more than 25 percent.

- (d) *A governing body may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less.
- (e) Changes that involve an increase in price will be supported by documentation of the cost components. For projects funded through the EDAP program, or with grant proceeds, the TWDB staff may request this information to be provided in a format equivalent to the Cost and Pricing Information form (No. WRD-277).
- (f) Any change orders involving a change in the project requiring a relocation of project components, sizing, or process may require additional environmental approval. A map and description of the proposed changes should be sent to the TWDB Environmental Reviewer for coordination and approval as soon as possible to avoid any delay.

22. Operation and Maintenance Manuals and Training

- (a) The Contractor shall obtain installation, operation, and maintenance manuals from manufacturers and suppliers for equipment furnished under the contract. The Contractor must submit an electronic copy (e.g., PDF) with bookmarks of each complete manual to the Owner's Engineer within 90 days after approval of shop drawings, product data, and samples, and not later than the date of shipment of each item of equipment to the project site or storage location. One (1) hard copy, with divider tabs in a binder, must be submitted to the Owner's Engineer upon request.
- (b) The Owner shall require their Engineer to promptly review each manual submitted, noting necessary corrections and revisions. If the Owner's Engineer rejects the manual, the Contractor must correct and resubmit the manual until it is acceptable to the Owner's Engineer as being in conformance with the design concept of the project and for compliance with information given in the Contract Documents. Owner may assess the Contractor a charge for reviews of the same items in excess of two (2) times. Such procedure shall not be considered cause for delay.
- (c) Acceptance of manuals by Owner's Engineer does not relieve the Contractor of any requirements of terms of Contract.
- (d) The Contractor shall provide the services of trained, qualified technicians to check final equipment installation, to assist as required in placing same in operation, and to instruct operating personnel in the proper manner of performing routine operation and maintenance of the equipment.
- (e) Operations and maintenance manuals specified hereinafter are in addition to any operation, maintenance, or installation instructions required by the Contractor to install, test, and start-up the equipment. Each manual is to be bound in a folder and labeled to identify the contents and project to which it applies. The manual shall contain the following applicable items:
 - i. A listing of the manufacturer's identification, including order number,

model, serial number, and location of parts and service centers.

- ii. A list of recommended stock of parts, including part number and quantity.
- iii. Complete replacement parts list.
- iv. Performance data and rating tables.
- v. Specific instructions for installation, operation, adjustment, and maintenance.
- vi. Exploded view drawings for major equipment items.
- vii. Lubrication requirements.
- viii. Complete equipment wiring diagrams and control schematics with terminal identification.

23. As-Built Dimensions and Record Drawings

- (a) The Contractor shall make appropriate daily measurements of facilities constructed and keep accurate records of location (horizontal and vertical) of all facilities.
- (b) Upon completion of each facility, the Contractor must furnish the Owner with one (1) set of full-size direct prints, marked with red pencil, to show as-built dimensions and locations of all work constructed (Record Drawings) and one (1) full-size electronic set of these drawings (e.g., PDF). As a minimum, the final drawings shall include the following:
 - i. Horizontal and vertical locations of work.
 - ii. Changes in equipment and dimensions due to substitutions.
 - iii. "Nameplate" data on all installed equipment.
 - iv. Deletions, additions, and changes to scope of work.
 - v. Any other changes made.

24. Close-Out Procedures

To close-out the construction contract and release final retainage, the following steps must be completed:

- (a) The TWDB Staff must conduct a construction contract Final Site Visit (FSV) and issue a FSV Report;
- (b) The following submittals must be received, reviewed, and accepted by the TWDB:
 - i. The final change order, adjustment of quantities, or a statement that all change orders have previously been submitted and there will be no more change orders;

- ii. The final pay request from the Contractor;
 - iii. A notarized affidavit by the Contractor that all bills have been paid;
 - iv. Certification by the Owner's Engineer that the work has been completed and was constructed in accordance with the approved plans and specifications and sound engineering principals and construction practices;
 - v. Acceptance of the project by the Owner in the form of a written resolution or other formal action;
 - vi. A warranty statement from the Contractor with a duration of at least 12 months from the date of project's completion is required; and the warranty's start date specified;
 - vii. The Owner's Final AIS Certification (TWDB-1106-C) **OR** Final BABA Certification (TWDB-1110-B), whichever is applicable;
 - viii. Confirmation that TWDB-1109-A form certifying the Project Public Awareness method of implementation used (applies to the entire SRF project) was submitted with the first outlay for the initial construction contract; Confirmation that the Owner and the Consulting Engineer have both received copies of the Record Drawings from the Contractor; and
 - ix. If CWSRF or DWSRF funds were used by the entity to prepare a Fiscal Sustainability Plan (FSP) or an Asset Management Plan (AMP), then the Owner must submit a copy of the applicable plan;
- (c) Once items (a) and (b) have been completed, the TWDB will be able to issue a Certificate of Approval, which will then allow the release of the construction contract's retainage.

25. Additional Forms and Information

The forms and guidance documents, mentioned throughout this Guidance and below, are available at the following TWDB website:

<http://www.twdb.texas.gov/financial/instructions/index.asp>

Search by either the document number or name.

Forms:

- Contractor's Act of Assurance (ED-103)
- Contractor's Resolution on Authorized Representative (ED-104)
- Debarment / Suspension Certification (SRF-404)
- The TWDB Prime Consultant/Contractor Certification (TWDB-0217)
- Monthly American Iron and Steel Certificate (TWDB-1106-A)
- American Iron and Steel (AIS) De Minimis Log (TWDB-1106-B)
- Final AIS Certification by Owner (TWDB-1106-C)
- Monthly Buy America, Build America (BABA) Act Certificate (TWDB-1110-A)
- Final Buy America, Build America (BABA) Act Certification (TWDB-1110-B)
- State Revolving Fund (SRF) Project Public Awareness Certification (TWDB-1109-A)

- Monthly Davis Bacon Wage Rate Certificate of Compliance Submittal by Owner (Sub-Recipient) (DB-0154)

Guidance Documents:

- CWSRF Guidance Manual (TWDB-0100)
- DWSRF Guidance Manual (TWDB-0115)
- State Revolving Fund Procurement Guidance (TWDB-0210)
- Requirements for American Iron and Steel (AIS) Guidance (TWDB-1106)
- Requirements for Build America, Buy America (BABA) Act Guidance (TWDB-0558)
- Guidance on Davis-Bacon Wage Rate Requirements for State Revolving Fund Projects (DB-0156)

EXHIBIT AA – WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA) SPECIAL CONDITIONS

WIFIA Specification Package and Bid Contract Language

Last Updated: May 2025

AMERICAN IRON AND STEEL (AIS) REQUIREMENT

The Contractor acknowledges to and for the benefit of **[Insert WIFIA Borrower Name]** (“Purchaser”) and the United States Environmental Protection Agency (“EPA”) that it understands the goods and services under this Agreement are being funded with monies made available by the Water Infrastructure Finance and Innovation Act program of the EPA that has statutory requirements commonly known as “American Iron and Steel” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contactor pursuant to this Agreement. The Contractor hereby represents, warrants and covenants to and for the benefit of the Purchaser and the EPA that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the EPA. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or the EPA to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or the EPA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EPA or any damages owed to the EPA by the Purchaser). While the Contractor has no direct contractual privity with the EPA, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the EPA is a third- party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the EPA.

BUILD AMERICA, BUY AMERICA ACT

Other language may be included on contracts for clarity on this federal requirement if an applicable waiver applies. For example, if the WIFIA program has determined program waiver coverage, indicate in contract documents, "This Project is covered under the WIFIA Program Waiver (June 22, 2022), which waives BABA requirements."

Build America, Buy America (Effective May 14, 2022)

The Contractor acknowledges to and for the benefit of _ ("Purchaser") and the United States Environmental Protection Agency ("EPA") that it understands the goods and services under this Agreement are being funded with federal monies made available by the Water Infrastructure Finance and Innovation Act program of EPA that have statutory requirements commonly known as "Build America, Buy America;" that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States ("Build America, Buy America Requirements") including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and Funding Authority (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Purchaser or the Funding Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or Funding Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Authority or any damages owed to the Funding Authority by the Owner). If the Contractor has no direct contractual privity with the Funding Authority, as a lender or awardee to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the Funding Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Funding Authority.

LABOR LAWS AND STANDARDS

The language below reflects the August 2023 updates to the Davis Bacon regulations.

Contract provisions and related matters.

a) *Required contract clauses.* The Agency head will cause or require the contracting officer to require the contracting officer to insert in full, or (for contracts covered by the Federal Acquisition Regulation (48 CFR chapter 1)) by reference, in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the laws referenced by § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages* —

(i) *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (a)(4) of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(1)(iii) of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) *Frequently recurring classifications.*

- (A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (a)(1)(iii) of this section, provided that:
- (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
 - (2) The classification is used in the area by the construction industry; and
 - (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.
- (B) The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) *Conformance.*

- (A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is used in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.
- (C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period

that additional time is necessary.

- (E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iv) *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (v) *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis- Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (vi) *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.
- (2) *Withholding* —
- (i) *Withholding requirements.* The [write in name of Federal agency or the recipient of Federal assistance] may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph (a)(3)(iv) of this section, the [Agency] may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment,

advance, or guarantee of funds until such violations have ceased.

(ii) *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its procurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

(3) *Records and certified payrolls —*

(i) *Basic record requirements —*

(A) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(B) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph (a)(1)(v) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) *Certified payroll requirements —*

(A) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the [write in name of appropriate Federal agency] if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of

agency]. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

- (B) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (a)(3)(i)(B) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.*, the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).
- (C) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:
- (1) That the certified payroll for the payroll period contains the information required to be provided under paragraph (a)(3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (a)(3)(i) of this section, and such information and records are correct and complete;
 - (2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.
- (D) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(C) of this section.
- (E) *Signature.* The signature by the contractor, subcontractor, or the contractor's or

subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

- (F) *Falsification*. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.
- (G) *Length of certified payroll retention*. The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- (iii) *Contracts, subcontracts, and related documents*. The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- (iv) *Required disclosures and access* —
 - (A) *Required record disclosures and access to workers*. The contractor or subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents that the [write the name of the agency] or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the [write the name of the agency] or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.
 - (B) *Sanctions for non-compliance with records and worker access requirements*. If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.
 - (C) *Required information disclosures*. Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the [write in name of appropriate Federal agency] if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or

both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of agency], the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) *Apprentices and equal employment opportunity* —

(i) *Apprentices* —

- (A) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (B) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.
- (C) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- (D) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

- (ii) *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) *Subcontracts.* The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the [write in the name of the Federal agency] may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.
- (7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) *Certification of eligibility.*
 - (i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).
 - (iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.
- (11) *Anti-retaliation.* It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
 - (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
 - (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
 - (iii) Cooperating in any investigation or other compliance action, or testifying in any

proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

b) *Contract Work Hours and Safety Standards Act (CWHSSA)*. The Agency Head must cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full, or (for contracts covered by the Federal Acquisition Regulation) by reference, in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses must be inserted in addition to the clauses required by paragraph (a) of this section or 29 CFR 4.6. As used in this paragraph (b), the terms “laborers and mechanics” include watchpersons and guards.

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

(2) *Violation; liability for unpaid wages; liquidated damages*. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1).

(3) *Withholding for unpaid wages and liquidated damages* —

(i) *Withholding process*. The [write in the name of the Federal agency or the recipient of Federal assistance] may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

- (ii) *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:
 - (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
 - (B) A contracting agency for its reprocurement costs;
 - (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
 - (D) A contractor's assignee(s);
 - (E) A contractor's successor(s); or
 - (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.
- (4) *Subcontracts.* The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.
- (5) *Anti-retaliation.*
 - (i) It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for: Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
 - (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
 - (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
 - (iv) Informing any other person about their rights under CWHSSA or this part.
- c) *CWHSSA required records clause.* In addition to the clauses contained in paragraph (b) of this section, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by § 5.1, the Agency Head must cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made; and actual wages paid. Further, the Agency Head must cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or

subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.

- d) *Incorporation of contract clauses and wage determinations by reference.* Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.
- e) *Incorporation by operation of law.* The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by § 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (Effective August 13, 2020). The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), at Section 889, prohibits EPA financial assistance recipients, including WIFIA borrowers, from expending loan funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in the Act, “covered telecommunications equipment or services” means:

- a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- b) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- c) Telecommunications or video surveillance services provided by such entities or using such equipment.
- d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- e) The Act does not prohibit:
- f) Procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements.
- g) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

ECONOMIC AND MISCELLANEOUS AUTHORITIES

DEBARMENT AND SUSPENSION AND PROHIBITIONS RELATING TO VIOLATIONS OF CWA AND CAA WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

Debarment and Suspension. Contractor certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 2 CFR part 180 and part 1532 (per Executive Order 12549, 51 FR 6370, February 21, 1986) or who is prohibited under Section 306 of the Clean Air Act or Section 508 of the Clean Water Act to participate in the [Project]. Suspension and debarment information can be accessed at <http://www.sam.gov>. Contractor represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement.

NEW RESTRICTIONS ON LOBBYING

Federal Lobbying Restrictions (31 U.S.C 1352). Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for USEPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, Contractor shall complete and submit to the City the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34. Contractor shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

CIVIL RIGHTS, NONDISCRIMINATION, AND EQUAL EMPLOYMENT OPPORTUNITY AUTHORITIES

AGE DISCRIMINATION ACT, SECTION 504 OF THE REHABILITATION ACT, TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AND SECTION 13 OF THE CLEAN WATER ACT

CIVIL RIGHTS OBLIGATIONS. Contractor shall comply with the following federal non-discrimination requirements:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP). (42 U.S.C 2000D, *et. seq*)
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities. (29 U.S.C. 794, supplemented by EO 11914, 41 FR 17871, April 29, 1976 and EO 11250, 30 FR 13003, October 13, 1965)
- The Age Discrimination Act of 1975, which prohibits age discrimination. (42 U.S.C 6101 *et. seq*)
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
- 40 CFR Part 7, as it relates to the foregoing.

EQUAL EMPLOYMENT OPPORTUNITY

Note the language below include 41 CFR 60 contract language for: EEO, Standard Federal Equal Employment Opportunity Construction Contract Specifications, and Segregated Facilities.

Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, revokes Executive Order 11246, Equal Employment Opportunity. However, the Department of Labor issued regulations implementing certain sections of the EO 11246 at 41 CFR part 60. Until DOL revokes these regulations, they remain effective law and compliance is required. Note that the required contract language references the revoked EO 11246 in several places. Though the language is required, any mention of EO 11246 can be disregarded.

Equal Employment Opportunity (EEO). The Contractor shall comply with Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). (EO 11246, 30 FR 12319, September 28, 1965)

Contractor's compliance with Executive order 11246 shall be based on implementation of the Equal Opportunity Clause, and specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4.

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such

provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

Standard Federal Equal Employment Opportunity Construction Contract Specifications. (41 CFR 60-4.3)

2) As used in these specifications:

- f) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- g) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- h) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- i) "Minority" includes:
 - i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

- 4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- 5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- 7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d) Provide immediate written notification to the Director when the union or unions with which the

Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
- l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

- m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- 9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- 12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- 13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific

affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

- 14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- 15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Segregated Facilities. (41 CFR 60-1.8) The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; Provided, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

CONFLICT OF INTEREST QUESTIONNAIRE -

FORM CIQ

For vendor or other person doing business with local governmental entity

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

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

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

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

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

Sundt Construction, Inc.

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

- A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?
 Yes No
- B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?
 Yes No
- C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?
 Yes No
- D. Describe each employment or business and family relationship with the local government officer named in this section.

4 I have no Conflict of Interest to disclose.

5 DocuSigned by:

Signature of vendor doing business with the governmental entity

2/6/2026
Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

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

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

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

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

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: 2BDA2EE8-AFB4-4B50-8CFB-AF6CA58CB79C	Status: Sent
Subject: Please DocuSign: City Council Contract 8289 CMAR Construction Phase for PCWRP Expansion	
Source Envelope:	
Document Pages: 266	Signatures: 4
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Cori Power
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	cori.power@cityofdenton.com
	IP Address: 198.49.140.104

Record Tracking

Status: Original	Holder: Cori Power	Location: DocuSign
2/5/2026 2:18:50 PM	cori.power@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Cori Power cori.power@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.104	Sent: 2/5/2026 2:30:12 PM Viewed: 2/5/2026 2:30:23 PM Signed: 2/5/2026 2:31:31 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 2/5/2026 2:31:40 PM Viewed: 2/5/2026 2:38:21 PM Signed: 2/5/2026 3:45:41 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 2/5/2026 3:45:48 PM Viewed: 2/5/2026 4:46:40 PM Signed: 2/5/2026 5:08:07 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Sam Reidy sreidy@sundt.com President - W/WW Group Security Level: Email, Account Authentication (None), Login with SSO	 Signature Adoption: Pre-selected Style Using IP Address: 155.190.2.32	Sent: 2/5/2026 5:08:19 PM Resent: 2/5/2026 6:19:12 PM Resent: 2/5/2026 6:20:02 PM Resent: 2/6/2026 12:05:51 PM Resent: 2/6/2026 4:37:01 PM Resent: 2/6/2026 4:57:48 PM Viewed: 2/6/2026 5:27:32 PM Signed: 2/6/2026 5:34:38 PM
Electronic Record and Signature Disclosure: Accepted: 2/6/2026 9:13:41 AM ID: 8b2d1052-60d4-4f26-93c0-f2d72269bcd9		

Signer Events	Signature	Timestamp
<p>Stephen D. Gay Stephen.Gay@cityofdenton.com General Manager Water Utilities Security Level: Email, Account Authentication (None)</p>	<p>Signed by:  FEB48BB9726E4A9...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 2/6/2026 5:34:48 PM Viewed: 2/9/2026 11:10:41 AM Signed: 2/9/2026 11:11:52 AM</p>

Electronic Record and Signature Disclosure:
Accepted: 2/9/2026 11:10:41 AM
ID: 5ecabcc9-4883-4439-9293-9ae0c6e9dcae

<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>	Sent: 2/9/2026 11:12:10 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

<p>Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)</p>
--

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

<p>Ingrid Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None)</p>
--

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; color: blue;">COPIED</div>	<p>Sent: 2/5/2026 2:31:40 PM</p>
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

<p>Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; color: blue;">COPIED</div>	<p>Sent: 2/9/2026 11:12:11 AM Viewed: 2/9/2026 4:24:38 PM</p>
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Carbon Copy Events	Status	Timestamp
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

City Secretary Office
citysecretary@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Jason Donnell
jason.donnell@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

David Brown
David.Brown@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 10/2/2025 10:49:22 AM
ID: ae29c722-3235-4146-98a2-e5c5378d30ca

Sohil Manjyiani
sohil.manjyiani@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 6/10/2025 10:39:55 AM
ID: e9c50515-22a1-4388-b736-919fb220ce7e

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Updated	Security Checked	2/5/2026 6:19:11 PM
Envelope Updated	Security Checked	2/5/2026 6:19:11 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

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To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

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