City of Denton

Meeting Agenda

Public Utilities Board

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Monday, February 23, 2026 | **9:00 AM** | **Council Work Session Room**

REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD

Citizens will be able to participate in the following way:

• eComment – The agenda was posted online at https://tx-denton.civicplus.com/242/Public-Meetings-Agendas. Once the agenda is posted, a link to make virtual comments using the eComment module will be made available next to the meeting listing on the Upcoming Events Calendar. Using eComment, Individuals may indicate support or opposition and submit a brief comment about a specific agenda item. eComments may be submitted up until the start of the meeting at which time the ability to make an eComment will be closed. eComments will be sent directly to members of the Public Utilities Board immediately upon submission and recorded by the Secretary into the Minutes of the Meeting.

After determining that a quorum is present, the Public Utilities Board of the City of Denton, Texas will convene in a Regular Meeting on Monday, February 23, 2026, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

This section of the agenda permits a person to make comments regarding public business on items as listed on the agenda. Each speaker will be allowed a maximum of four (4) minutes. Such person(s) shall have registered under the REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD detailed at the beginning of this agenda. Registration is required prior to the time this agenda item is read into the record.

2. CONSENT AGENDA

Each of the items on the Consent Agenda is recommended by the Staff and approval thereof will be strictly on the basis of the Staff recommendations. Approval of the Consent Agenda authorizes the City Manager or designee to implement each item in accordance with the Staff recommendations. The Public Utilities Board has received background information and has had an opportunity to raise questions regarding these items prior to consideration.

Listed below are bids, purchase orders, contracts, and other items to be approved for payment or other action under the Consent Agenda (Agenda Items A). This listing is provided on the Consent Agenda to allow Public Utilities Board Members to discuss or withdraw an item prior to approval of the Consent Agenda. If no items are pulled, the Consent Agenda Items will be approved with one motion. If items are pulled for separate discussion, they may be considered as the first items following approval of the Consent Agenda.

A. PUB26-246 Consider recommending adoption of an ordinance of the City of Denton repealing

ordinance No. 24-2027; approving the 2026 Denton Municipal Electric- Energy Risk Management Policy (the "2026 ERMP"); delegating authority as provided in the 2026 ERMP; authorizing and approving the subsequent execution of such other ancillary and related documents, including, without limitation, contracts, nominations, certificates, assignments, licenses, directions, instruments, confirmations, orders, and statements as are authorized by the 2026 ERMP, which are incident to or related thereto; confirming that the City of Denton, its mayor, its city council members, its city manager, its city attorney, and its city secretary are authorized to perform such acts and obligations as are reasonably required to consummate those future transactions which are provided for and authorized by the 2026 ERMP; finding that the purchase of electricity, natural gas, and related commodities and instruments are exempt from the requirements of competitive bidding; finding that the purchase of electricity, natural gas, and related commodities and instruments made by the city under the terms of the 2026 ERMP are in the public welfare of the citizens and electric ratepayers of the city; authorizing the expenditure of funds therefor; and, providing an effective date.

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Ordinance
Exhibit 3 - Risk Policy Clean
Exhibit 4 - Risk Policy REDLINE

3. ITEMS FOR INDIVIDUAL CONSIDERATION

A. PUB26-018 Consider approval of the February 9, 2026 minutes.

Attachments: 2.9.26 PUB Minutes

B. PUB26-009 Consider recommending adoption of 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).

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Original Ordinance, Pre-Construction Contract, and Amendment 1
Exhibit 3 - Presentation
Exhibit 4 - Ordinance and Amendment 1

C. PUB26-020 Management Reports

1. Board Member Appointment Notification
2. Hickory Creek Road Phase 3 Memo
3. Future Agenda Items
4. New Business Action Items

Attachments: 1. Board Member Appointment Notification
2. Hickory Creek Road Phase 3 Memo
3. Future Agenda Items
4. New Business Action Items

4. CONCLUDING ITEMS

A. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the Public Utilities Board or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting AND Under Section 551.0415 of the Texas Open Meetings Act, provide reports about items of community interest regarding which no action will be taken, to include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

Following the completion of the Regular Meeting, the Public Utilities Board will convene in a Work Session at which the following items will be considered:

WORK SESSION

A. PUB26-021 Receive a report, hold a discussion, and give staff direction regarding the City's utility billing process for electric service.

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Presentation

Following the completion of the Work Session, the Public Utilities Board (PUB) will convene in a Closed Meeting to consider specific items when these items are listed below under the Closed Meeting section of this agenda. The Public Utilities Board (PUB) reserves the right to adjourn into a Closed Meeting on any item on its Open Meeting agenda consistent with Chapter 551 of the Texas Government Code, as amended, or as otherwise allowed by law.

CLOSED MEETING

A. PUB26-247 Deliberations Regarding Certain Public Power Utilities: Competitive Matters - Under Texas Government Code Section 551.086; Consultation with Attorneys - Under Texas Government Code Section 551.071.

Receive information from staff regarding an update to the Denton Municipal Electric Energy Risk Management Policy that includes public power utility competitive data; discuss, deliberate, and provide direction to staff regarding same. Consultation with City's attorney regarding legal issues associated with the above matter where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation. This agenda item is related to Consent

Agenda item PUB26-246 and will be a placeholder if Public Utilities Board members have questions requiring confidential discussion as allowed by law.

Any final action, decision, or vote on a matter deliberated in a Closed Meeting will only be taken in an Open Meeting that is held in compliance with Texas Government Code, Chapter 551, except to the extent such final action, decision, or vote is taken in the Closed Meeting in accordance with the provisions of Section 551.086 of the Texas Government Code (The 'Public Power Exception'). The Public Utilities Board reserves the right to adjourn into a Closed Meeting or Executive Session as authorized by Texas Government Code, Section 551.001, et seq. (The Texas Open Meetings Act) on any item on its Open Meeting agenda or to reconvene in a continuation of the Closed Meeting on the Closed Meeting items noted above, in accordance with the Texas Open Meetings Act, including, without limitation Section 551.071-551.086 of the Texas Open Meetings Act.

CERTIFICATE

I certify that the above notice of meeting was posted on the official website (https://tx-denton.civicplus.com/242/Public-Meetings-Agendas) and bulletin board at City Hall, 215 E. McKinney Street, Denton, Texas, on February 17, 2026, in advance of the three (3) business day posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

_____

OFFICE OF THE CITY SECRETARY

NOTE: THE CITY OF DENTON'S DESIGNATED PUBLIC MEETING FACILITIES ARE ACCESSIBLE IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT. THE CITY WILL PROVIDE ACCOMMODATION, SUCH AS SIGN LANGUAGE INTERPRETERS FOR THE HEARING IMPAIRED, IF REQUESTED AT LEAST TWO (2) BUSINESS DAYS IN ADVANCE OF THE SCHEDULED MEETING. PLEASE CALL THE CITY SECRETARY'S OFFICE AT 940-349-8309 OR USE TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) BY CALLING 1-800-RELAY-TX SO THAT REASONABLE ACCOMMODATION CAN BE ARRANGED.

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: **Denton Municipal Electric**

CM/DCM/ACM: **Cassey Ogden**

DATE: **February 23, 2026**

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton repealing ordinance No. 24-2027; approving the 2026 Denton Municipal Electric- Energy Risk Management Policy (the "2026 ERMP"); delegating authority as provided in the 2026 ERMP; authorizing and approving the subsequent execution of such other ancillary and related documents, including, without limitation, contracts, nominations, certificates, assignments, licenses, directions, instruments, confirmations, orders, and statements as are authorized by the 2026 ERMP, which are incident to or related thereto; confirming that the City of Denton, its mayor, its city council members, its city manager, its city attorney, and its city secretary are authorized to perform such acts and obligations as are reasonably required to consummate those future transactions which are provided for and authorized by the 2026 ERMP; finding that the purchase of electricity, natural gas, and related commodities and instruments are exempt from the requirements of competitive bidding; finding that the purchase of electricity, natural gas, and related commodities and instruments made by the city under the terms of the 2026 ERMP are in the public welfare of the citizens and electric ratepayers of the city; authorizing the expenditure of funds therefor; and, providing an effective date.

INFORMATION/BACKGROUND

The current DME Energy Risk Management Policy ("Policy"), approved by the City Council on October 22, 2024 by City Ordinance 24-2027, provided an updated framework under which DME's Energy Management Organization (EMO) manages DME's energy portfolio on a day to day basis, including control structures and protocols that provide for 1) segregation of duties and delegation of authority, 2) governance and oversight processes, 3) rigorous management reporting and 4) strict adherence to authorized hedging products and transaction limits.

The proposed updates to the 2024 Policy address changes to DME's portfolio and associated execution risk associated with large loads and updates to the Denton Renewable Resource Plan.

The DME Risk Committee met on December 4, 2025 to deliberate on changes to the policy. In the forthcoming proposed update, DME and the Risk Committee recommend the Policy updates as described below:

- Increasing the authorization levels for power and natural gas transactions.
- Adding tolling agreements and structured transactions as permitted vehicles for hedging.
- Eliminate references to Optimization Hedge Book
- Added transaction limit table for Ancillary Services
- Added the use of energy brokers to facilitate transactions between DME and counterparties for commodities

RECOMMENDATION:

The DME Risk Committee's proposed updates to the 2024 Policy can be characterized as minor changes and clarifications to address changes to DME's portfolio and execution risk associated with large loads and changing market conditions. Staff recommends approval of these changes to the 2024 version of the DME Energy Risk Management Policy.

EXHIBITS

1. Exhibit 1 - Agenda Information Sheet
2. Exhibit 2 - Ordinance
2. Exhibit 3 – Risk Policy CLEAN
2. Exhibit 4 – Risk Policy REDLINE

Respectfully submitted:
Chris Lutrick
Executive Manager of Operations

ORDINANCE NO. **26-_____**

AN ORDINANCE OF THE CITY OF DENTON REPEALING ORDINANCE NO. 24-2027; APPROVING THE 2026 DENTON MUNICIPAL ELECTRIC- ENERGY RISK MANAGEMENT POLICY (the "2026 ERMP"); DELEGATING AUTHORITY AS PROVIDED IN THE 2026 ERMP; AUTHORIZING AND APPROVING THE SUBSEQUENT EXECUTION OF SUCH OTHER ANCILLARY AND RELATED DOCUMENTS, INCLUDING, WITHOUT LIMITATION, CONTRACTS, NOMINATIONS, CERTIFICATES, ASSIGNMENTS, LICENSES, DIRECTIONS, INSTRUMENTS, CONFIRMATIONS, ORDERS, AND STATEMENTS AS ARE AUTHORIZED BY THE 2026 ERMP, WHICH ARE INCIDENT TO OR RELATED THERETO; CONFIRMING THAT THE CITY OF DENTON, ITS MAYOR, ITS CITY COUNCIL MEMBERS, ITS CITY MANAGER, ITS CITY ATTORNEY, AND ITS CITY SECRETARY ARE AUTHORIZED TO PERFORM SUCH ACTS AND OBLIGATIONS AS ARE REASONABLY REQUIRED TO CONSUMMATE THOSE FUTURE TRANSACTIONS WHICH ARE PROVIDED FOR AND AUTHORIZED BY THE 2026 ERMP; FINDING THAT THE PURCHASE OF ELECTRICITY, NATURAL GAS, AND RELATED COMMODITIES AND INSTRUMENTS ARE EXEMPT FROM THE REQUIREMENTS OF COMPETITIVE BIDDING; FINDING THAT THE PURCHASE OF ELECTRICITY, NATURAL GAS, AND RELATED COMMODITIES AND INSTRUMENTS MADE BY THE CITY UNDER THE TERMS OF THE 2026 ERMP ARE IN THE PUBLIC WELFARE OF THE CITIZENS AND ELECTRIC RATEPAYERS OF THE CITY; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton ("City"), a Texas home-rule municipal corporation governed by the constitution and laws of the State of Texas, operates a municipally-owned electric utility; and

WHEREAS, on October 22, 2024, the City Council ("Council") passed Ordinance No. 24-2027 which repealed the 2023 Denton Municipal Electric -Energy Risk Management Policy and approved the 2024 Denton Municipal Electric - Energy Risk Management Policy ("2024 ERMP"); and

WHEREAS, the 2024 ERMP requires that it be reviewed, amended if necessary, and approved by the Council; and

WHEREAS, the Council has determined and finds that (i) the 2026 ERMP provides for the purchase of electricity, natural gas, related commodities and instruments in the future in strict accordance with the provisions of the 2026 ERMP; (ii) any and all contracts and other documents that are required to be entered into by and between the buyers or sellers of electric energy, natural gas, and related commodities and instruments and the City are, (a) provided that these transactions are within the described and delineated limits and guidelines which are set forth in the 2026 ERMP, authorized, and (b) excepted from public disclosure, as permitted by the provisions of Section 552.133, Texas Government Code, as documents that are reasonably related to the

competitive public power matter, the disclosure of which documents would provide an advantage to the competitors or prospective competitors of Denton Municipal Electric; and, (iii) all such documents which are incident to or related with the above-described documents, as from time to time may be required by the City and/or the seller, are (a) authorized, and (b) should be excepted from public disclosure, as permitted by the provisions of Section 552.133, Texas Government Code, as documents that are reasonably related to a competitive public power matter, the disclosure of which documents would provide an advantage to the competitors or prospective competitors of Denton Municipal Electric; and

WHEREAS, the Council has determined and finds that the 2026 ERMP will not impair the ability of the City to comply with the provisions of any of its utility revenue bonds, as amended, which are now issued and outstanding; and

WHEREAS, the Council has determined and finds that both (i) Sections 252.022(a)(15) and 252.022(c) of the Texas Local Government Code are applicable to the 2026 ERMP, and those subsequent transactions authorized by said 2026 ERMP involving the purchase of electricity, natural gas, and related commodities, and (ii) the Texas statutory competitive bidding law are not applicable to such purchases by the City; and

WHEREAS, the Council has further determined and finds that these actions and the 2026 ERMP are in the best interest of its citizens and ratepayers;

NOW THEREFORE, THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference and are made a part of this ordinance.

SECTION 2. Ordinance No. 24-2027, and the 2024 ERMP approved by the same, are both repealed and are of no further force and effect, except that all transactions made under the 2024 ERMP remain protected from disclosure Section 552.133, Texas Government Code and any transactions entered into thereunder remain in effect for the term of any such transactions.

SECTION 3. The 2026 ERMP attached as Exhibit "A" and incorporated by reference, is approved and adopted.

SECTION 4. The City Manager, or their designee, and the City Secretary, or their designee, are authorized to execute, attest, and deliver respectively, all contracts which are authorized by the 2026 ERMP, and other such documents which are incident to, or related to, or which arise under the same ("Related Documents"), and to take such other additional actions as the City Manager, or their designee, shall determine to be necessary and appropriate to effectuate the matters set forth in this Ordinance and the 2026 ERMP.

SECTION 5. The City Council hereby delegates authority to the DME Risk Management Committee to make amendments or changes to the Hedge Plan that do not conflict with the 2026

ERMP. The City Council also delegates authority to the DME Risk Management Committee to make minor amendments or changes to the ERMP that do not conflict with the overall ERMP as approved by City Council.

SECTION 6. All subsequent actions taken by the Mayor, or their designee; the City Manager, or their designee; the City Attorney, or their designee; or the City Secretary, or their designee in furtherance of any future transactions that are authorized under the 2026 ERMP are approved and authorized in all respects as of the dates and times that such actions are taken.

SECTION 7. Immediately following the adoption by the Council of the 2026 ERMP, any and all subsequent documents and supporting documents which are executed pursuant to the 2026 ERMP as amended herein are to be sealed by the City Secretary and maintained in their custody and control as documents which are excepted from public disclosure under the provisions of §552.133 of the Texas Government Code (the "Public Power Exception"); unless otherwise lawfully ordered to disclose said documents.

SECTION 8. The expenditure of funds as provided for in this ordinance is hereby authorized.

SECTION 9. 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 Rumhor, 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: Marcella Lunn

Denton Municipal Electric

Energy Risk Management Policy

Approved by the City Council of the City of Denton, Texas

City Ordinance No. 26-____

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SECTION 1 PROGRAM OVERVIEW

1.1 Introduction

The City of Denton's municipally owned electric utility, operated under the trade name of Denton Municipal Electric ("DME"), is in the business of providing affordable and reliable energy and energy services to its customers in an environmentally sustainable manner. This Energy Risk Management Policy ("Policy") has been developed to establish a comprehensive framework for DME to meet and exceed the overall goals and objectives set by the City Council, subject to approved risk tolerances.

This Policy provides specific controls (e.g., segregation of duties, oversight, etc.) for the management of strategic and operational risks and establishes guidelines for DME to plan, execute and control the risks inherent in the generation, purchase and sale of energy for its retail customers. The resulting framework shall govern DME's energy portfolio activities through which City Management and DME personnel identify, capture, measure, manage, control, monitor and report financial and other risks. This Policy specifically addresses management of energy portfolio risk and provides a framework to maintain proper controls over portfolio activities as they change over time.

1.2 Objectives

The objectives of this Risk Policy are as follows:

1. Identification of inherent risks associated with procurement of energy and ancillary services to serve the retail load of DME's customers.
2. Periodic and consistent measurement and reporting of risks
3. Establishment of acceptable risks levels
4. Identification of authorized risk management transactions, volumes, terms and authority levels for all employees, committees, and boards involved in execution of risk management transactions.
5. Establishing disciplinary actions for violation of risk management policy including trading limits

DME's energy portfolio consists of its assets such as power plants, power supply contracts of varying delivery patterns and maturity, wholesale physical and financial hedges[1], congestion management trades, ancillary service requirements and retail load obligations. A number of inherent risks are associated with DME's energy portfolio, including market (price) risk, volumetric risk, operational risk, organizational risk, counterparty credit risk, liquidity (funding)

[1] As used in this Policy, physical and financial hedges are market transactions used to offset pre-financial existing risk in the portfolio and are generally used to reduce price exposure associated with DME supply and demand, price volatility or transmission congestion.

risk, and regulatory/legal risks (for more detail, see Appendix A for a summary of DME's portfolio risks).

DME manages these risks to achieve its core business objectives of delivering energy to its customers at reasonable and stable rates. Key risk management objectives and performance measures are shown in the table below.

Objective	Performance Metric
Reduce price and volumetric risk	Reduction in exposure to price volatility and volumetric variability
Competitive costs	Comparison of actual energy costs (including hedges and ERCOT balancing transactions, but excluding PPAs) to the average annual ERCOT Day Ahead Market (DAM) price, plus a hedging premium
Reasonable rates	Comparison of DME average rate to that of other Texas municipal utilities
Risk Policy Adherence	Identification, reporting and disciplinary action of policy violations

1.3 Energy Risk Management Framework

DME's Energy Risk Management Policy is built around a framework that includes the following four elements: Organizational Objectives, Risk Mitigation, and Measurement, Portfolio Management and Risk Control Infrastructure. Each of these elements is discussed further below.

1.3.1 Organizational Objectives

The Risk Management Committee ("RMC") approves goals, strategies, and objectives which help define the appropriate portfolio management activities that are undertaken by DME. This is done in coordination with strategic and business planning activities conducted to establish the budget and through periodic strategic planning activities.

1.3.2 Risk Mitigation and Measurement

As part of clarifying organizational objectives, this Policy defines the Energy Management Office's ("EMO") role in identifying, measuring and mitigating energy risks. DME's risk mitigation practices focus on implementation of the approved Hedge Plan for mid to long term risk mitigation and inside the month risk management activities to meet required targets, along with transaction and risk exposure limits.

1.3.3 Portfolio Management

DME engages in transactions that are conducted in accordance with hedging targets and risk management and transaction limits specified in connection with this Policy and in broader DME policies and operating procedures.

1.3.4 Risk Control Infrastructure

DME maintains a collection of internal controls, systems, and processes necessary to achieve the objectives of this Policy. These controls comprise DME's energy risk control infrastructure and includes provisions for:

- Energy Risk Management Organization Structure and Responsibilities
- Transaction and Risk Exposure Targets and Limits
- Portfolio Position Tracking
- Risk Measurement and Mitigation
- Performance Measurement
- Management Reporting
- Operating Procedures

1.4 Procedures and Guidelines

This Policy prescribes the management, organization, authority, processes, tools and systems to monitor, measure, control and mitigate market risks through DME's energy management activities. Upon adoption by the City Council, this Policy shall be implemented through a supporting set of standard operating procedures ("EMO Procedures Manual"). The operating criteria and parameters shall be updated as necessary to reflect changes in market conditions and staffing levels. All standard operating procedures shall be approved by the RMC.

All departmental procedures that may impact DME's energy portfolio shall be in full compliance with this Policy. DME executive management shall evaluate the degree of detail necessary in the operating procedures and may require that additional procedures be developed and implemented.

SECTION 2 ORGANIZATION STRUCTURE

2.1 Risk Management Committee ("RMC")

While the leadership of the Front, Middle and Back Office groups, along with the DME General Manager regularly review executed transactions, monitor proximity to transaction limits and oversee the implementation of DME's portfolio management activity, consistent with industry best practices, the executive oversight of DME's energy management activities is conducted through the Risk Management Committee ("RMC"). The RMC is also responsible for activities governed by this Policy and ensuring that Policy requirements are met. The RMC membership is to be comprised of five voting members and two non-voting members.

2.1.1. Risk Management Committee Responsibility

The RMC has the responsibility for executive oversight over the Program, which includes:

- Understanding DME's risk management objectives as described in Section 1.2 above and risk tolerances as described in Appendix B.3 and B.4.
- Approving annual risk plans, targets and limits as reflected in DME's proposed annual budget and Hedge Plan.
- Ensuring Program strategies are consistent with overall City goals and obligations.
- Reviewing this Policy at least annually and making recommendations for changes to the City Council and Public Utilities Board.
- Reviewing and monitoring DME's progress in managing its hedging plans/targets as described in Appendix E and proximity risk exposure limits specified in Appendix B.3.
- Understanding and discussing DME's energy-related financial risk exposures and DME's strategies for monitoring and controlling these exposures.

2.1.2 Risk Management Committee Structure

The voting members are:

- PUB Chair (or designee)
- City Manager (or designee)
- DME General Manager (Chairman)
- Executive Manager, Operations (or designee)
- City's Director of Finance (or designee)

The non-voting members, both acting solely within their respective responsibilities set out in the City's Charter, are:

- City Auditor (or designee)
- City Attorney (or designee)

2.1.3 Meeting Frequency, Voting, Member Vacancies and Reports

1. As needed, but no less than quarterly, the RMC shall meet to review EMO operations as described in Section 4.2. The Chair of the RMC shall provide at least five (5) business days' notice to the members.

2. Any member of the RMC can request a meeting to address circumstances or issues that may require immediate attention.

3. As needed, but not less than annually, the RMC reports results of DME's energy management activities and compliance with this Policy to the Public Utilities Board and the City Council

4. Each of the five voting members shall have a single vote on matters that come before the RMC and a voting member, or designee, must participate in the RMC meeting in order to vote and approve a proposed action. If a voting member is unable to attend an RMC meeting in person or by telephone, the member may designate an alternate to vote in his or her absence. A quorum of at least four (4) voting members is required for a vote to take place. The RMC makes decisions and take actions by a simple majority vote. If the RMC reaches an impasse that cannot be addressed through a vote, the DME General Manager may make a final decision by the end of the next business day on the issue and shall immediately notify all RMC members by email.

5. In cases where a member of the RMC leaves the employ of the City, the City Manager, upon consultation with the DME General Manager, will resolve the RMC vacancy by making an interim appointment at their discretion.

6. A standard set of reports shall be prepared and distributed by the Chairman in advance of each RMC meeting. The DME Compliance Officer, or their designee will act as Secretary to the RMC and will document all meetings and actions taken by the RMC in meeting notes that will be distributed to RMC members for their review and acceptance. Risk Policy compliance and risk position reports will be presented the RMC in a form that is approved by the RMC and which may be amended as determined necessary by the RMC. When establishing the standard set of reports, the RMC will consider the requirements set out in 2.1.3.

7. Meeting notes approved by the RMC will be distributed by the City Attorney to the RMC members, the City Manager, City Council and PUB.

8. As Chairman of the Risk Management Committee, the DME General Manager is responsible for all DME energy management activities, including the day-to-day efforts of the risk control function. At a high level, these responsibilities include understanding and measuring market risk, validating risk mitigation activities, hedge strategy compliance and risk reporting.

2.1.4 Third Party Review of Energy Management Office; DME Cooperation with Consultant

1. DME may employ a consultant periodically to provide an independent review to the RMC including, but not limited to:

   - Assessment of energy markets including energy news and counterparty information relevant to DME's risk management and hedge positions
   - Independent monitoring of DME's risk and policy limits as defined and approved in this policy
   - Review of DME's front office hedge strategy and recommendations for potential improvements
   - Independent review of DME's executed hedge positions for compliance with this policy
   - Review of DME's hedge positions and portfolio, including review of
     - Risk report
     - Position reports
     - P/L reports
     - Counterparty exposure reports
     - Settlements reports
   - Support in the ongoing development of DME's RMC standard set of reports
   - Performance of a cost benchmark analysis.
   - Review of Middle and Back Office functions.
   - Other tasks and responsibilities as may be determined important by the RMC.

2. DME shall cooperate with all requests of the consultant.

2.2 Front, Middle, and Back Offices

The "Front-Middle-Back Office" model provides for segregation of duties and efficient administrative support. It is a way to segregate DME energy management activities into

transactional ("Front Office"), independent risk control and transaction compliance ("Middle Office") and financial, accounting, and contract administration support ("Back Office") functions.

2.2.1 Front Office

The Front Office is primarily responsible for managing the energy supply portfolio associated with DME's wholesale market activities and directing its daily physical and financial trading.

The Front Office directly executes physical or financial transactions to support activities such as management of fuel, power, congestion, ancillary services, environmental attributes, and wholesale sales activities as well as develops measurable hedge strategies and plans at least annually (see Appendix E for details on hedging framework).

Specific responsibilities of Front Office personnel include:

1. Developing and implementing strategies that are consistent with program objectives and this Policy.
2. Monitoring the energy markets including determining the forward prices for products traded by the EMO ("marking curves") structural/regulatory changes, counterparty activity and financial wherewithal, market liquidity, and new supply and hedging instruments.
3. Advising the RMC of significant changes in the market and in the liquidity of approved hedging instruments, along with advising the RMC of the need for seeking Council approval of new hedging instruments that may help DME achieve its risk objectives. New hedging instruments shall be approved based on the guidelines shown in Appendix G – New Product / Market Instrument Approval Checklist.
4. Managing the portfolio of positions in physical and financial energy and energy-related commodities in a manner consistent with DME's risk management objectives and the corresponding Hedge Strategies contained in Appendix E – Forward Hedging Strategies and Plans.
5. Executing physical and financial transactions with approved counterparties through the appropriate exchange, broker, voice communication, email, etc.
6. Recording details of financial and physical transactions for DME's ETRM system.
7. Ensuring that transactions comply with this Policy.
8. Functioning as the primary point of contract and as an active participant in the ERCOT stakeholder processes.

The Front Office oversight role is accomplished through supervisory review and approval. DME's Front Office consists of Market Operations and the Market Analytics group and reports to the Assistant General Manager or the functional manager of the EMO.

2.2.2 Middle Office

The Middle Office is responsible for monitoring compliance with this Policy, for determining that energy transactions and exposures are within authorized limits and meet minimum targets, identifying any violations of the limits in this Policy and reporting any such violations to the General Manager and or Assistant General Manager, and for reporting the market exposure associated with all transactions entered into by the Front Office on an ongoing basis. The Middle Office is also responsible for credit risk management activities, including vetting and due diligence of counterparties, negotiating enabling agreements, establishing credit limits, quantifying the level of acceptable credit and market risk and providing estimates of key credit risk drivers.. If, in the opinion of the Middle Office, hedge decisions do not achieve program objectives, the Middle Office will determine why the objectives are not achieved and recommend to the General Manager, changes to existing and proposed hedge transactions and positions. In the event there is no consensus between the Front Office and the Middle Office, the Middle Office will recommend changes to the RMC on potential changes to the hedge transactions and the rationale for such recommended changes.

The Middle Office responsibilities include monitoring DME's energy management risk exposures and mitigation measures and ensuring compliance with policies, guidelines, and procedures. In connection with this responsibility, the Middle Office maintains a compliance log of any operational and/or procedural violations, which will be reported to the RMC each quarter. Alleged violations of and policy or procedures will be immediately reported to the General Manager and the Assistant General Manager.

Additionally, the Middle Office is responsible for recommending to the RMC when changes in policy or operating procedures are required. These recommendations may involve the temporary or permanent halting of transactions with one or more counterparties, and any other topic the Middle Office believes represents potential unacceptable risk exposure.

The Middle Office adopts and updates, as necessary, the Energy Risk Management Policy after such updates are adopted by the RMC, guidelines and procedures so that portfolio management functions occur in compliance with Energy Risk Management Policies and energy risk procedures and guidelines.

Specific responsibilities of the Middle Office include the following:

1. Verifies and reconciles physical and financial transactions, including conditions, quantities, and amounts to be paid and dates. The Middle Office collects and validates market quotes to mark portfolio positions and to ensure that the terms recorded and understood by DME match the terms actually agreed upon with counter parties and/or brokers.
2. Prepares position reports identifying the financial positions, physical positions, anticipated physical exposures, and the market value of the energy portfolio(s) on a position-by-position and aggregate basis.
3. Maintains risk measurement, performance, and valuation models, including various stress tests.
4. Prepares routine risk reports, including those identified in Section 4.2 – Required Reports.
5. On a daily basis, confirms that all exposures and activities comply with authorized market instruments as contained in Appendix D – Approved Types, the risk limits as contained in Appendix A – Risk Exposure and Transaction Limits and hedge coverage targets as contained in Appendix E – Forward Hedging Strategies and Plans. In doing so, the Middle Office monitors transactions and position limits, review daily positions, and activity reports, and ensures that trading instruments comply with current hedging strategies and are permissible.
6. Follows the remedial actions process in the event of any risk limit or hedge target breaches.
7. Ensures all transactions comply with this Policy.
8. Executes and sends written confirmations to counterparties to ensure terms and conditions are mutually agreed upon.
9. Manages the credit risk associated with DME's energy portfolio, including reporting current and potential future credit exposure, credit positions relative to authorized limits and changes to the credit risk profile of DME counterparties.
10. Maintains all counterparty enabling agreements and ensures that only enabled counterparties are populated and authorized in the system of record.

The Middle Office reports to the DME Regulatory & Risk Division Manager.

2.2.3 Back Office

The Back Office's primary responsibility is to ensure that financial records of DME's energy management operation accurately reflect the current state of energy risk management and power supply portfolio management activity. The Back Office is responsible for invoice checkout, verifying supply payments, invoicing, and settlements. The Back Office is also responsible, in coordination with City of Denton Finance, AR, and AP departments, for accurately calculating and booking the financial results of energy transaction activities,

billing, and accounts payable, as well as recording, reporting and accounting for risk management and hedging. Specific responsibilities of the Back Office include the following:

1. Supports accounts payable and receivable operations.
2. Coordinates with City Finance the recording of all revenue and expenses in the general ledger and other subsidiary ledgers when appropriate.
3. Coordinates the recording of posted cash receipts and revenues with City Finance to the appropriate subsidiary ledger.
4. Settles transactions (verification, accounts payable/receivable)
5. Develops and maintain documentation outlining standard procedures for performing the settlement functions described herein.
6. Notifies the Front Office, Middle Office, and the General Manager of any discrepancies that result from the reconciliation process.
7. Oversees the safekeeping of transaction-related documents.
8. Maintains funding and reconciles and records activity in cash accounts held with other ERCOT and other market participants.

The Back Office reports to the Business Services Division Manager.

SECTION 3 MARKET RISK PROTOCOLS AND EXPOSURE CONTROL

3.1 Market Risk Protocols

The following market risk protocols shall govern DME's participation in wholesale energy markets. Specific limits, methodologies, reports, operational procedures and approval processes are detailed in the EMO Procedures Manual.

- DME will ensure that it has full knowledge of its energy portfolio position and the resulting exposure and understands the implications of its energy management activities.
- Only personnel authorized by the DME General Manager, or their designee, pursuant to a written Delegation of Authority Memorandum or email copied to the middle office can transact on behalf of DME in the wholesale energy market (see Transaction Limits section of Appendix B).
- Personnel involved with DME's energy management activities will ensure they obtain competitive prices, transact based upon competitive market conditions and that counterparty credit risk is diversified by setting up master enabling agreements [such as the International Swaps and Derivatives Association, Inc. (ISDA), Edison Electric Institute (EEI), and the North American Energy Standards Board (NAESB)].
- DME may only transact in wholesale energy-market products authorized by this Policy and at retail price levels stipulated in the current rate manual or as approved by the PUB or City Council as applicable.
- DME may only transact within transaction limits approved and defined in this Policy.
- All energy transactions will be carried out on recorded phone lines, electronic trading platforms, via electronic media (including email and other online methods) or other media that can be recorded and documented.
- Metrics for assessing DME's market risk exposure will be specified, measured, monitored, and reported on a regular basis to the RMC.
- On a daily basis, all wholesale market transactions are recorded in the official system of record which captures and reports physical and financial positions so that each can be reviewed separately and in total so that net volume and price risk and collateralization requirements can be accurately assessed and managed in real time. This system also serves as a central check and balance tool; therefore, allowing for reconciliation of physical and financial confirmations with transactional input. This system also produces and reports risk information.
- Models and inputs for valuation and risk measurement and mitigation shall be subjected to a validation and change control process. The models employed and associated processes shall

be described in detail in the EMO Procedures Manual.

3.2 Authorized Transactions

Authorized types of transactions are addressed in Appendix D of this Policy. These transactions types are, and shall continue to be, focused on supporting the energy portfolio goals of the City Council and this Policy.

3.3 Market Risk Control

An important element to any energy risk management and mitigation program is the regular identification, measurement, and communication of market risk. DME's net "open" position (i.e., whether it needs to buy or sell energy products on a daily, hourly, monthly or annual basis to balance the energy portfolio) and the market exposure associated with its net open positions shall be quantified and compared against exposure limits contained in this Policy and discussed, on a regular basis, with the RMC.

Market exposure associated with these net positions shall be quantified using forms of measurement approved by the RMC. The market exposure measurement criteria shall be reviewed at least annually and consider changes in DME's net positions and existing and projected market conditions. The Middle Office shall have primary responsibility for coordinating the development, maintenance, and modification all market measurement methodologies within DME and for recommending approval of these methodologies by the RMC.

3.3.1 Risk Tolerance

For the purposes of this Policy, DME's Energy Risk tolerance is defined by the degree of uncertainty that DME can accept in its future financial ratios and customer rates on a projected basis.

DME's Energy Risk tolerance and measurement of Energy Risk shall include "at risk" forms of risk measurement such as Cash Flow at Risk ("CFaR") or Value at Risk ("VaR"), augmented with scenario analysis and stress testing. These forms of risk measurement are described in more detail in Appendix A – Risk Exposure and Transaction Limits and in sections of the EMO Procedures Manual.

3.3.2 Transaction and Exposure Limits

The setting of and the adherence to transaction limits is an important control element to ensure DME does not assume greater aggregate energy market exposure than is intended and helps ensure that the transaction strategy level is appropriate at various levels of aggregation (e.g. by commodity, delivery period, strategy, energy portfolio, etc.).

Appendices B and D, along with the EMO Procedures Manual, contain the Approved Transaction Types and the Transaction Limits for DME. It is the responsibility of the Front

Office, Middle Office and the RMC to utilize these limits to manage and mitigate risk-taking activities. The Front Office shall be responsible for maintaining exposures within prescribed limits and for recommending changes to those limits to the RMC when market conditions or operating circumstances result in limits becoming ineffective or inappropriate in controlling these activities.

The Middle Office shall be responsible for monitoring compliance with the Transaction Limits and obtaining approval from the RMC for any changes to Transaction Limits or the Transaction Limit structure. It is the responsibility of the Middle Office and Front Office to ensure that Transaction Limits are strictly enforced.

3.3.3 Stress Testing

In addition to mitigating and measuring financial exposure using the methods above, stress testing is used to examine performance of the energy portfolio under extreme adverse conditions.

In stress testing, extreme market conditions are applied to the portfolio to determine how the portfolio will perform under such conditions. Stress testing requires thorough evaluation of past market periods to determine those that would represent severe outcomes. In addition, the performance of the portfolio is also estimated for individual and combined potential market conditions. Such conditions are intentionally chosen to represent adverse conditions and combinations of conditions, even if they are extremely unlikely.

The Middle Office shall design and maintain a stress testing program, in consultation with the Front Office. The stress testing approach shall be reviewed by the Middle Office regularly, and the stress testing program shall be presented to the RMC for review on at least an annual basis.

3.3.4 Model Validation and Controls

A risk commonly faced by those involved with energy management activity is *model risk*—the risk that either the methodology or assumptions used to value the portfolio becomes invalid. Inaccurate assumptions and incorrectly designed models can cause risk management problems in every market. However, the complexity of energy models and their extended lifetimes, make these problems especially common in the energy markets.

Model risk occurs primarily for two reasons:

- The model may have fundamental errors the user is unaware of and may produce inaccurate outputs when viewed against the design objective and intended business uses.

- The model may be used incorrectly or inappropriately.

Ensuring adequate model documentation is an important control for managing modeling risk. This requires both organizing model information and accountability from people using and developing models.

DME keeps a record of all internally and externally developed models used in its operation (see EMO Operating Procedures 1-4), including:

- a description of the information input component (assumptions and data used by the model, including quantitative approaches whose inputs are partially or wholly qualitative or based on expert judgment),
- version control (when key model inputs or model processes change)
- processing component (which transform inputs into estimates), and
- reporting component (which translates the estimates into useful business information).

The Middle Office will review and validate models used by DME and report to the RMC annually.

3.4 Information Systems and Models

Energy risk management information systems consist of the data, models and other software and hardware used to collect, analyze, test, and validate transactions within DME's portfolio in order to monitor and control risk. Although various departments within the City of Denton or DME may have responsibilities for using and maintaining DME's risk management systems, the Middle Office shall have overall responsibility for ensuring that the systems are sufficient to perform the risk management functions outlined in this Policy.

As part of a service level agreement with the City of Denton Technology Services, the Middle Office shall also be responsible for maintaining the security, integrity and reliability of the software used for energy risk management purposes (e.g. valuation models, administrative and reporting software, energy risk management databases, etc.). Due to the commercially sensitive nature of the data in DME's energy risk management systems, access by DME employees shall be revoked immediately upon receipt of resignation notification.

In accordance with the service level agreement which is currently followed between DME and the City of Denton Technology Services, Technology Services shall be responsible for maintaining the integrity and reliability of the hardware used for both energy management and energy risk management purposes, including business continuity, disaster protection and recovery plans.

SECTION 4 RISK REPORTING

4.1 Risk Management Reporting Policy

Key to energy risk management is the monitoring of risks and the accurate and timely information that must be provided to all parties involved in any aspect of energy risk management to allow them to perform their functions appropriately. The separation of execution and reporting responsibilities is an industry best practice for ensuring that timely and accurate information is being reported.

4.2 Risk Management Committee Meeting Updates

Minutes and meeting materials from quarterly RMC meetings will be distributed to the PUB and Council for their review.

At a minimum, quarterly RMC meetings will include a review of the following topics:

Controls Compliance

Identification of any activities that have exceeded permissible limits. The General Manager or his/her designee will provide details of the causes of any limit violations, the measures taken to mitigate future violations and a report of any disciplinary actions taken as a result of such violations.

Hedge Target Compliance

Provides an update on progress on executing latest hedge plan execution timetable.

Portfolio Competitiveness

Provides a comparison of latest 12-month cost/MWH vs ERCOT spot markets (Day-Ahead and Real-Time Market) and compares the market value of renewable resources to their contract costs.

Credit Exposure

Identifies the credit limit for each counterparty, current level of exposure with the counterparty, and remaining available credit. Also includes an update on current ERCOT credit requirements and thresholds.

4.3 Transaction Valuation

DME's financial records will be maintained in full accordance with generally accepted accounting principles ("GAAP"), Government Accounting Standards Board (GASB) and will be consistent with FERC Uniform System of Accounts.

Front, Middle, and Back Office functions shall coordinate their efforts and maintain vigilance to ensure that DME's energy management transactions and risk exposures are accurately valued in an unbiased manner. Transaction valuation and reporting of positions shall be based on objective, market-observed prices or models.

Open positions (i.e., whether DME needs to buy or sell energy on a daily, hourly, monthly or annual basis to balance customer loads against available resources) should be valued ("marked-to-market") daily, based on consistent valuation methods and data sources. Whenever possible, these valuations shall be based on independent, publicly available market information and data sources (e.g., Bloomberg, Reuters, NYMEX, ICE, broker quotes, etc.).

As noted in Section 2.2.2, the specification of position valuation methods is the responsibility of the Middle Office and is subject to RMC review. The Middle Office is responsible for obtaining and disseminating market pricing information (Section 2.2.2, item 2, page 13) in a timely and consistent manner, along with maintaining and updating transaction data and information sources used for trade evaluation (Section 2.2.2, item 1, page 13). The Middle Office is also responsible for assuring that data used for energy risk management calculations represent accurate and timely information available from reputable market or internal sources (Section 2.2.2, items 1 and 2, page 13).

SECTION 5 OTHER RESPONSIBILITIES AND POLICIES

5.1 Organization-Wide Responsibilities

It is the policy of DME and the City of Denton that all personnel adhere to standards of integrity, ethics, conflicts of interest, compliance with statutory law and regulations and other applicable standards of personal conduct.

The willful misrepresentation or concealment of information regarding portfolio management and/or risk management activities from senior management or any person responsible for the accurate tracking and reporting of such activities shall result in disciplinary action up to and including termination in accordance with DME and City of Denton policies and possible legal action as allowed or required by law.

As an employee of the City of Denton, all DME personnel involved with its energy management activity should not have an expectation of privacy in the conduct of their duties. At any time, recorded phone calls and electronic transactions, emails, texts, etc. may be reviewed to ensure appropriate conduct or to review transactional information.

5.2 Commercial Interests and Trading for Personal Accounts

All DME personnel who have any specific responsibilities delineated under this Policy or in the EMO Procedures Manual, are prohibited from engaging in the activities listed below:

- Physical or financial trading of any commodities stipulated in this Policy or in supporting departmental procedures for their own account

- Holding an undisclosed interest in any account or corporate entity (other than DME), which is used to trade the commodities described above.

If there is any doubt as to whether a prohibited condition exists, then it is the employee's responsibility to disclose and discuss the possible prohibited condition with their supervisor. In addition, any employee receiving taxable income from any person or business doing business with DME must file a Conflicts Disclosure Statement in accordance with Chapter 176 of the Texas Local Government Code. Failure to comply with these requirements may result in disciplinary action up to and including immediate termination of employment, in accordance with DME and City of Denton policies.

5.3 Acknowledgment of Policy Requirements

All DME personnel connected with the energy risk management program must sign a statement attesting that they have received, read, and understand this Policy document and the City of Denton policies regarding employee conduct. A sample statement is provided in Appendix G.

5.4 Adoption of Energy Risk Management Policy

This Policy shall be formally reviewed, approved and adopted by ordinance of the City Council upon substantial edits to the Policy.

SECTION 6 CREDIT RISK POLICY

6.1 Introduction

The purpose of this credit risk policy is to establish a consistent process whereby the credit risk of future financial loss due to counterparty physical or financial non-performance is significantly diminished for energy purchases and/or sales. This objective will be accomplished by a pre-contract qualification and ongoing review process for all energy suppliers and/or purchasers in combination with effective on-going monitoring systems and established limits. Any energy transaction conducted by DME will comply with this Credit Risk Policy.

6.2 POLICY OVERVIEW

In general, all energy suppliers and/or purchasers will be subject to a financial review in accordance with DME's standards for determination of creditworthiness. Evaluation of a counterparty's financial health and its ability to deliver its product or to pay is crucial. Such review procedures prior to contract execution are designed to protect DME from undue exposure to losses that could arise from an insolvent counterparty not being able to pay for energy that they have purchased or to cover replacement costs incurred for term contracts that have positive economic value in relation to current market prices. A credit review cannot be viewed as the only mechanism to prevent any and all losses, but it can help identify those counterparties where performance has been a problem in the past or may present a problem in the future. Established limits combined with proper monitoring systems will help enable DME to effectively mitigate possible losses due to counterparty insolvency.

6.3 Credit Risk Control

Credit Risk is the potential impact on DME's financial performance due to the chance of non-performance in payment or delivery (either physical or financial) by an energy entity that has executed a commercial agreement with DME to buy and sell energy ("counterparty").

DME actively mitigates its energy credit risk by making informed decisions regarding which counterparties to transact with and to what degree. Credit risk is defined as the risk of counterparty nonperformance, or failure to deliver its obligation (whether with an energy product or the payment of amounts owed).

6.3.1 Credit Policies

DME mitigates its energy credit risk by:

- Incorporating the expected transacting volumes, timing, and expected energy prices, when establishing an energy credit risk tolerance for a calendar year.

- Assessing counterparty creditworthiness and establishing credit limits for counterparties based on that assessment.
- Requiring a counterparty to be assigned a credit limit prior to transacting with it.
- Monitoring and assessing market and counterparty events to adjust credit limits as appropriate.
- Calculating and reporting the maximum expected loss if a counterparty defaults ("counterparty credit exposure").

6.3.2 Credit Limits

The EMO Procedures Manual includes a credit limit framework for DME's counterparties based on various factors such as debt ratings and financial statistics. Specific counterparty credit limits include consideration of financial ratios, audited financial statements, and asset quality. Credit limits and credit exposure based upon the trades in place with each counterparty and the market price for the net long or short positions with each is measured every day by the Middle Office. At least semi-annually the credit strength of each counterparty that DME is exposed to will be evaluated by the Middle Office, or immediately if their business conditions change or their credit rating has been downgraded and negative changes that have the potential to increase DME's credit risk will be reported to the RMC.

Prior to execution of any transaction with a counterparty, the Front Office verifies that the counterparty has available credit. In addition, no transaction shall be executed that will cause the counterparty credit limit to be exceeded unless explicitly approved by the RMC.

6.3.3 Counterparty Credit Function

The counterparty credit function includes counterparty credit analysis and approval of new and existing counterparties as well as the calculation, aggregation, monitoring and reporting of credit exposures. In addition to those activities mentioned in section 3.1, the Middle Office manages DME's credit function.

The objective of the counterparty credit function is to minimize the potential adverse financial impacts on DME in the event of a potential default by a counterparty. This is accomplished by:

- Establishing a credit risk mitigation structure within the energy risk management program.
- Providing a framework to enable DME to qualify energy suppliers and transact with approved counterparties.

- Determining counterparty transacting parameters ("transaction limits") to conservatively control and measure DME's exposure to any one supplier.
- Implementing conservative business processes and procedures (to be included in the EMO Procedures Manual) to gather and monitor financial information on each counterparty to estimate counterparty credit exposures.

6.4 Counterparty Credit Risk Assessment & Management

Counterparty Credit Risk (CCR) is defined as the risk that the counterparty to a transaction could default before the final settlement of the transaction's cash flows, where an economic loss would occur if the transactions (or portfolio of transactions) with the counterparty had a positive economic value at the time of default, or during the close-out period.

6.4.1 Counterparty Credit Rating

- A counterparty's credit rating is the basis for measuring its credit quality. DME assesses counterparty credit risk based on the latest ratings from the following external credit assessment institutions: S&P, Moody's and Fitch. If no external credit rating is available, the Middle Office will assess a counterparty's credit quality and approve an internal rating.
- If there are multiple ratings, the following rules shall apply: (i) If there are two ratings by external credit assessment institutions and the two ratings differ, the lower rating will be applied; (ii) If there are three ratings and they are not all equivalent, the rating in the middle shall be applied
- Whenever there is a rating change from an external credit assessment institution, the related counterparty's rating must be updated.
- It is important to recognize the limitations of externally produced credit ratings. Counterparties are the ones who are actually pay for a credit rating, the primary purpose of which is to facilitate their own borrowings and investment. Credit ratings agencies are not responsible for verifying the accuracy of the financial data supplied to them. For this reason, the Middle Office will also produce its own internal credit rating.
- The Middle Office will assess each counterparty's credit limit, using a broad analytical framework that includes:
    - Counterparty specific information (business activity; capital, leverage and earnings; risk position; funding and liquidity; ownership structures)
    - Macro factors (evaluate economic, industry and sector risks) and
    - External factors (parent/group support and government support)

6.4.2 Credit Limit Management

- To be effective a credit limit is not a guideline but a "hard stop" control that needs to be taken seriously by all internal stakeholders. It is a disciplined approach taken to potential breaches, increases and renewals.

- A counterparty's credit limit represents the maximum committed exposure DME will undertake with each counterparty with regard to credit, which may be less than the applicable Collateral Threshold value in the associated enabling agreement.
- Once a counterparty has been determined to be creditworthy, Middle Office will propose a maximum Credit Limit for approval by the Risk Committee.
- Although a counterparty may qualify for a certain maximum Credit Limit, the types of products to be transacted, as well anticipated transaction volumes, terms and other business factors may prompt Middle Office to set a lower limit for Front Office trading activities with that counterparty that is considered more appropriate.
- Middle Office will closely monitor each counterparty's credit quality and will alert the Risk Committee to any downside risk such as credit rating migration, key financial performance deterioration, potential event on cross default, etc. Early actions such as limit adjustment and collateral monitoring shall be taken to actively manage credit and liquidity risk exposure.
- Middle office shall actively manage collateral and margin based on the terms stipulated in the Collateral Annex to relevant enabling agreements.
- In the case of a counterparty default, a workout team shall be established under the leadership of the Middle Office with staff members of the Front and Back Office, City Finance and City Legal to design a timely workout plan, including any necessary recovery actions.
- DME may trade with counterparties having sub-investment grade credit ratings or privately funded companies with no credit rating. However, entering into contracts with counterparties considered below investment grade or privately funded companies with no credit rating requires caution, greater business justification and should be accompanied by a greater level of monitoring.
- The Middle Office shall also monitor credit exposure on a portfolio level, including concentration risk.

6.4.3 Credit Limit Monitoring

The Middle Office will monitor the current credit exposure for each counterparty with whom DME transacts and include such information in the Current Counterparty Credit Risk Report which includes current counterparty credit exposure compared against limits and the limit assigned to Denton by the counterparty.

Current credit exposure is a measure of the known exposures and composed of two primary exposures – (1) realized exposure, and (2) unrealized or forward exposure. Realized exposure, a payable or receivable amount owed between counterparties, is a measurement of cash flow for billed and unbilled transactions. Unrealized or forward exposure is a measure of current unrealized exposure and includes the measure of a counterparty's incentive to fulfill contractual obligations. Unrealized or forward exposure measures the risk associated with having a payment default or the need to replace a transaction in the event of delivery default.

Appendix A PORTFOLIO RISKS

As an electric utility, participation in physical and financial energy markets exposes DME and its customer/owners to the risks of cost and pricing uncertainty, revenue and commodity market volatility, and uncertainty in meeting budget targets and the Energy Cost Adjustment (ECA) component of its retail rates. These risks may be broadly categorized into three risk categories: market, credit, and operational. Each category of risk is described below. The categories are not entirely separate: disruptions of planned operations, for instance, can expose a utility to the risk of having to execute unforeseen transactions during adverse market conditions.

The following section provides descriptions of the energy-related risks the Policy is intended to address.

A.1. MARKET RISK

DME manages energy purchases and sales with the goal of reducing the business risks associated with its obligation to serve energy to its customer/owners. These risks include volume-related and price-related risks.

A.1.1. Price Risk

Because of continual changes in the supply and demand for electricity, significant price changes can occur over a short time frame, otherwise known as price volatility. High price volatility means a high degree of uncertainty about the level of prices in the immediate time frame and the future. DME's price risk takes several forms, including: 1) exposure to changes in spot prices which DME faces in purchasing electric energy from the ERCOT market, 2) forward price risk of anticipated purchases or sales of power or fuel in the future and 3) the cost of energy-related products and services such as congestion revenue rights and ancillary services.

Price risk also includes the basis risk associated with potential differences in the price of a commodity between geographic locations that is inherent in the ERCOT and physical natural gas markets. For example, whenever DME must purchase power to satisfy native load requirements or is exposed to natural gas price uncertainty at various physical delivery points, DME is financially at risk due to the uncertainty in transmission or transportation costs between various locations.

A.1.2. Volume Risk

Volume Risk refers to uncertainty in the quantity of a commodity or service demanded, acquired, or supplied that has a potential economic impact. A primary volume risk for DME is the uncertainty associated with the amount of load DME will be required to serve. Weather conditions affect customer energy usage, and weather changes make forecasting of load and non-dispatchable resources a challenge, causing actual quantities to deviate from forecasts. Forced or unexpected outages of generation resources also impact DME's volumetric risk. Generation levels from renewable energy resources are based upon the weather conditions experienced at the location of the renewable resources. EMO Operating Procedures 1-4 contain details about DME's processes for developing forecasts of expected volumes associated with its portfolio of load and resources.

A.1.3. Liquidity Risk

DME transacts business in commodity markets that have inherent liquidity risk. Liquidity risk for DME arises when its intended transaction quantities exceed the size of current market bids (to buy) and offers (to sell). When DME desires to execute a transaction for a volume/quantity in excess of current market bids or offers, potential counterparties may be unwilling or unavailable to transact with DME. Transactions of nonstandard sizes and types also present liquidity risks.

Liquidity risk should also be considered with regard to positions thought to be offsetting, but that may become open in the event that a counterparty defaults on their transaction responsibility (also referred to as "default risk"). It may be difficult to replace defaulted transactions on short notice. If a position must be covered quickly, the price of the necessary replacement transaction can be worse than if no urgency existed, especially if the potential counterparties know about the urgent need, putting DME as a significant disadvantage.

A.2. CREDIT RISK

DME is at risk if a customer, supplier or trading counterparty is unable or unwilling to fulfill its present or future contractual obligations to deliver power or fuel, or to make a timely payment of invoices or collateral.

A.2.1 Credit Risk

Credit Risk equals the potential replacement value of counterparty contractual obligations to deliver or receive power or fuel, or to make a timely payment to settle a

financial contractual obligation. The potential financial impact from counterparty defaults is significant. DME's credit risk is addressed in a separate Credit Risk section of this Policy.

A.2.2. Funding Risk

Funding risk is related to credit risk. This term refers to the risk that DME might have to pay margin or post collateral to meet requirements to securitize its credit under credit provisions of Power Purchase Agreements, wholesale energy market, or to meet margin requirements for cleared contracts. In the event of significant funding risk associated with the default of a counterparty or the inability of the DEC to produce energy resulting in large replacement energy costs, the City of Denton's reserves would be required to provide cover costs.

A.3. OPERATIONAL RISK

The term operational risk is often used as a catch-all category intended to include all risks that are not explicitly designated by other names, such as market risk, volume risk, liquidity risk, and credit risk. Operational risks include problems of several types that can have adverse financial consequences, and that relate to the operations of DME's energy portfolio, identification and control of risks, and processing and settlement of transactions. One such risk is Model Risk.

A.3.1. MODEL RISK

Model risk is a form of systems risk associated with unrecognized deficiencies of information systems used to in value transactions. A model may incorporate assumptions to derive unobservable pricing parameters from observable ones. There is a risk that a particular model used to value a transaction may not properly capture the value and risks of the transaction, and that its deficiencies may emerge only after the fact, following unfavorable market movements.

A.3.2. DENTON ENERGY CENTER OUTAGE RISK

A forced or unexpected outage of the DEC when the output from the units are anticipated to be used to hedge market price risk due to lower than expected renewable energy generation is an operational risk. This risk is mitigated by a) preventative maintenance programs designed to minimize forced outages b) not over-committing energy and capacity from the DEC during times of likely high prices, and c) the purchase of out-of-the-money call options. DME may also recommend to City Council the purchase of outage insurance for specific time periods during the year if, upon evaluating the results of a solicitation, DME determines the associated insurance premiums are economical.

A.4. REGULATORY RISK

Regulatory risk is the uncertainty to DME's performance due to potential changes in laws or regulatory mandates. Examples include, but are not limited to, the following.

A.4.1 Carbon Cost

Unless explicitly borne by an energy supplier, DME is exposed to the potential risk of carbon costs. Any applicable law, rule, regulation, ordinance, protocol, order, decree, judgment or other similar legal mandate could cause DME to pay carbon costs associated with the production, generation, sale, metering, measurement, transmission, storage or delivery of electric energy.

A.4.2 Changes to ERCOT market design

The PUCT has directed ERCOT to study the impact of changes to its market design, which could have a significant impact on the flow of dollars between suppliers and consumers of power, possibly triggering the need to renegotiate long-term power contracts and changing the valuation of existing generation assets.

A.4.3 Ongoing Changes to ERCOT Protocols

The rules under which ERCOT operates are in a constant state of change. In fact, they change so often that ERCOT's governing board has a committee (Protocol Revisions Subcommittee) that meets monthly to review and process proposed changes submitted by ERCOT and its market participants. These changes usually impact how costs are allocated within ERCOT among market sectors, consumers and suppliers of power, and individual market participants like DME.

A.4.4 Regulatory Compliance

Market Participants in the ERCOT region are subject to both state and federal laws and regulations.

Market Participants that own or operate facilities that are part of the Bulk Electric System, as defined in federal law, are subject to oversight by the Federal Energy Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), and Texas Reliability Entity, Inc. (Texas RE).

Additionally, all ERCOT Market Participants are subject to oversight by the Public Utility Commission of Texas (PUCT). The PUCT administers the Public Utility Regulatory Act (PURA), and adopts and enforces rules pursuant to the authority granted in PURA. The

PUCT also has oversight and enforcement authority over the ERCOT Protocols, Operating Guides, and Other Binding Documents. The PUCT has contracts with an Independent Market Monitor (16 T.A.C. §25.365) and a Reliability Monitor (16 T.A.C. §25.503) to assist with oversight and enforcement activities.

Appendix B RISK EXPOSURE AND TRANSACTION LIMITS

DME's energy supply, trading and risk management-related activities shall be segregated among a number of "risk books." A risk book is a way of classifying and tracking positions and transactions that have similar or directly related purposes so that value and risk can be measured in sufficient detail to support both risk control and transaction strategy decisions. The establishment and management of risk books enables the EMO to track costs and evaluate hedging effectiveness associated with specific parts of its energy portfolio.

B.1 Risk Books

Load Book
A Load Book captures all transactions (for prompt month or beyond) associated with hedging energy to serve city load.

Renewables Book
The Renewables Book captures the value of all transactions (for prompt month or beyond) associated with hedging long-term renewable energy positions.

Congestion Book
The purpose of the Congestion Book is to track the purchase and sale of CRRs and associated financial instruments (see Section B.5.2 below), which are traded in ERCOT auctions or in the ERCOT Day Ahead Market and used to hedge against transmission congestion risk.

DEC Book
The DEC Book includes hedge transactions (for prompt month or beyond) associated with the Denton Energy Center.

DEC Gas Book
The DEC Gas Book includes hedge transactions (for prompt month or beyond) associated with the Denton Energy Center's fuel costs.

Cash Book

The Cash Book captures physical and financial hedges with a duration of less than one month.

Large Load Book
The Large Load Book captures all the transaction associated with hedging DME's large load customers for prompt month and beyond.

Ancillary Services Book
The Ancillary Services book includes hedge transactions associated with hedging the cost of its natural short ERCOT ancillary services obligation.

EMO Wholesale Book
The EMO Wholesale Book is used to consolidate all external trades into a single book prior to being assigned to resource books.

B.2 Risk Exposure Limits

An essential control element in the management of market risk is the development and adherence to an appropriate limit structure. A well-designed limit structure helps ensure DME does not assume greater aggregate risk than intended and helps ensure that risk taking at the transaction strategy level is appropriate at various levels of aggregation (e.g., by commodity, delivery period, strategy, etc.).

The primary forms of limits listed below shall be applied to DME's energy management activity:

Rates at Risk – Rates at Risk ("RaR") is a form of Cash Flow at Risk (CFaR) measurement. RaR limits will be set to limit the amount of uncertainty in future rates over the immediately upcoming 12 to 36-month period. If uncertainty in future rate requirements is higher than DME's risk tolerance, DME will consider hedging or implementing other risk management strategies to reduce the potential need for unforeseen rate increases and/or deterioration of DME's financial condition.

Value at Risk –Value at Risk ("VaR") limits will be set to limit the potential loss in value of the portfolio.

Notional/Volumetric –To augment RaR and VaR limits, notional limits and/or volumetric limits will be established. Notional limits are specified based on transaction or strategy dollar amount (i.e., contract or strategy volume x price). Volumetric limits are specified based on volume (e.g., MW, MWH, MMBTU, etc.). This provides a concrete limit to account for uncertainties in risk measurement and human judgment capabilities. Other volumetric limits may be established in relation to specific risks not captured by RaR or VaR.

ERCOT – Implementation of the ERCOT Real Time Market (RTM) and Day Ahead Markets (DAM) require daily attention to Available Credit Limits (ACL) and forward liability calculations. The Back Office shall actively monitor and communicate any changes affecting current credit positions.

Stop Loss –Stop loss limits are set, such that, if an individual position or strategy (or a hedge transaction or strategy which has become ineffective, including optimization trades) is performing adversely and approaches a predetermined level of losses, the position or strategy must be liquidated or completely hedged to prevent further loss.

B.3 Portfolio Risk Exposure Limits

Because ERCOT is responsible for ensuring physical reliability of the grid, DME's efforts focus primarily on managing the rate impact of price volatility risk of its portfolio. For the purposes of managing this risk, DME will assume an average consumer risk tolerance (CRT) equivalent to 1 cent per kWh of load over a rolling 12-month period. For the avoidance of doubt, under the current DME rate structure, the CRT applies to the total average cost per kWh on an annual average basis for the residential class. A CRT in excess of 1 cent per kWh outside the 12-month rolling average will be reported to the RMC as soon as it becomes known to DME.

Hedging is DME's primary method for reducing market price volatility risk, either by locking in or limiting the amount of variation of a future market price. The "downside" of hedging is that it not only reduces the chances of incurring higher costs than expected, it also reduces the chances of lower-than-expected energy costs, and correspondingly lower electric rates.

DME uses an "at Risk"[2] methodology to estimate, at a 95% confidence level, the amount of an electric rate increase that could occur due to changes in market conditions such as volumetric risk associated with its renewable resources, ERCOT day-ahead and real time market price volatility, gas price volatility, nodal price congestion, price correlations and credit risk.

If DME's estimate of a rate increase, at a 95% confidence level, exceeds the CRT threshold by 25%, DME will meet and confer with the RMC within 2 weeks, and with the City Council and PUB as noted in the table below within 30 days after meeting with the RMC, to discuss alternatives for implementing additional hedging strategies to bring the level of possible price volatility back inside the CRT threshold. No particular portfolio action is required, making this notification requirement very different from a trading limit.

[2] The "at Risk" metric DME will use is based on a "Rates at Risk" (RaR) methodology, which refers to the statistical dollar amount that can be lost on the net open position of a portfolio over a specific time horizon and with a given confidence interval. DME's RaR methodology accounts for the increasing potential distribution of prices as time passes, as well as the expiration of the positions in the portfolio with the passage of time. The result is the estimation of loss, at the specified confidence level, assuming that the portfolio remains constant over time until all positions within it have expired.

"At Risk" limits for the total portfolio are:

	RMC Notification	Council / PUB Notification
Rolling 12 months (in aggregate)	$15.0 million	$19.0 million

B.4 Open Position Management

DME's primary objective is to protect against risks inherent in its portfolio, such as exposure to price volatility and from variability in supply and demand. DME plans to execute hedging transactions relatively evenly over time, to diversify timing risk (similar to dollar cost averaging) and does not speculate[3]. Market transactions shall be executed as a result of strategies designed to maintain the net open position (the gap between expected demand and committed supply) within tolerances which are consistent with current hedging strategies. The resultant net open position shall be updated to reflect the new hedging transactions as soon as practical, but generally no later than the next business day.

The hedge plan provides targets for hedging action of the DME's loads, renewable resources and the Denton Energy Center as a function of time for the next three years.

B.5 Transaction Limits

Another vital control element in the management of energy risk is the development and adherence to transaction limits. Transaction limits ensure the energy portfolio management function is prudent, deliberate, and controlled at various levels of position aggregation and transaction duration. Transaction limits are established in consideration of overall portfolio strategies, market conditions and risk tolerance levels and include the following principles:

- DME personnel involved with its energy management activity are authorized to execute any intra-day or day-ahead transaction which is necessary to mitigate market and financial risk exposure to DME customer/owners.
- Speculative transactions are those transactions not intended for hedging purposes and are strictly prohibited. For the avoidance of doubt, Optimization Trades as described in the Hedge Plan, are not classified as speculative transactions. All transactions shall either reduce risks or be risk neutral to DME customers.
- No transaction may be executed for which DME does not have adequate systems or analytical methods to track, record, value, or analyze the incremental cash flow and risk.

[3] The US Commodity Futures Trading Commission defines a speculator as "a trader who does not hedge, but who trades with the objective of achieving profits through the successful anticipation of price movements" (CFTC Glossary: A guide to the language of the futures industry).

- Any single transaction for a term greater than three years must be approved by the RMC prior to execution.
- Scheduling of loads and resources, along with corresponding bid or offer prices associated with ERCOT Day Ahead Market (DAM), ERCOT Real Time Market (RTM) or ERCOT Supplementary Ancillary Services (SASM) Market are not subject to this Risk Policy or to the limits outlined below and do not require prior RMC approval.

All executed transactions must be recorded and captured in DME's ETRM system of record. Further, all transactions may be conducted on recorded phone lines, electronic trading platforms, or other media that can be recorded and documented. Confirmations of transactions will be compared with the ETRM transaction records by Middle Office, verified and executed by Middle Office personnel. Confirmations for transactions with ERCOT are evidenced through the ERCOT Settlement Summary statement.

The following tables outline the transaction authorization limits established for DME personnel involved with its energy management activity when executing transactions. Those personnel are permitted to execute transactions up to their designated limits or up to the limits of the roles they supervise. They may also execute transactions on behalf of someone having the required authority. Only the Approved Transaction Types listed in Appendix D may be executed unless otherwise approved by the RMC.

B.5.1 Bilateral or Financial Power Transaction Limits

Title	Term	Lead Time	Transaction Size (MW)	Cumulative Volume Limits (MWh)
City Council	No Limit	No Limit	No Max	No limit
City Manager or RMC	≤ 8 Year	≤ 7 Years	300	10,000,000 per 5 Full Calendar Years rolling average
DME General Manager	≤ 7 Year	≤ 5 Years	150	8,000,000 per 5 Full Calendar Years rolling average
Executive Manager Power Supply	≤ 4 Years	≤ 4 Years	100	16,000,000 per 3 Full Calendar Years or 36-month rolling average

EMO Division Manager QSE Manager Trading Optimization Manager Senior Energy Trading Analyst	≤ 24 Month	≤ 24 Months	100	24,000,000 per 36 month rolling average
Energy Market Analyst Senior Energy Market Analyst	≤ 6 Month	≤ 24 Month	50	6,000,000 per month
Senior RT Trader RT Trader	≤ 2 Month	≤ 2 Month	150	1,250,000 per week

Notes:

- Transaction Size Limits represent MW volume per hour.
- Lead time represents the time period from the date a trade is executed to the start of delivery.
- Authorized products include electric power, including both physical and financial derivatives[4], as well as ancillary services. Financial derivatives may be over the counter Electric Power Futures, Heat Rates and Options on Electric Power and CRRs or Exchange Traded Products.
- Authorization for approval of these transactions may be delegated. If transaction authority is delegated downward, volumetric limit applies to approving authority.

B.5.2 Congestion Management Transaction Limits

Title	Auction Type	CRR Auction Period	Approved Instruments	Time Period	Source/Sink Combinations
DME General Manager	Annual & Monthly	Any month or TOU offered by ERCOT (5 years)	CRR	Time of Use	All ERCOT Resource Nodes, all ERCOT Hubs and Load Zones
Executive Manager Power Supply	Annual & Monthly	Any month or TOU block offered by ERCOT (SEQ 6 or less)	CRR	Time of Use	Conventional Resource Nodes, Primary Hub and Load Zone
EMO Division Manager	Annual & Monthly	Any month or TOU block	CRR	Time of Use	Conventional Resource Nodes,

[4] As used here, a derivative is a contract that derives its value from the performance of an underlying asset or index.

Trading Optimization Manager Manager – Analytics and Transmission	Daily	offered by ERCOT (SEQ 3 or less) N/A	Point to Point Obligations/Options	Hourly	Primary Hub and Load Zone
QSE Manager Senior Energy Market Analyst Sr ERCOT Transmission Analyst	Monthly Daily	Any month or TOU block offered by ERCOT (Monthly Auction) N/A	CRR Point to Point Obligations/Options	Time of Use Hourly	Conventional Resource Nodes, Primary Hub and Load Zone
SeniorRT Trader RT Trader	Daily	N/A	Point to Point Obligations/Options	Hourly	Conventional Resource Nodes, Primary Hub and Load Zone

Notes:

- Annual CRR auctions occur monthly for successive 6-month periods (called "sequences" or SEQ) with progressively increasing amounts of transmission capacity available for purchase in each sequence. A copy of the current CRR Activity Calendar which shows key dates associated with each Monthly and Annual CRR auction at http://ercot.com/mktinfo/crr
- Monthly CRR auctions end about 2 weeks before the CRR effective start date
- Conventional Resource Nodes include Denton Energy Center, White Tail & Santa Rita Wind Farms, Blue Bell Solar Farm and resource nodes or ERCOT Hubs associated with fully executed PPAs
- Primary ERCOT Hub is “North Hub”
- Primary ERCOT Load Zone is “Load Zone North”
- The purchase of CRRs for each Source/Sink pair from all ERCOT auctions is limited to the nameplate rating of the generator for City-owned resources or the contract capacity rating for PPAs.

A Congestion Revenue Right (CRR) is a financial instrument that results in a charge or a payment to the owner, when the ERCOT transmission grid is congested in the Day Ahead Market (DAM). DME uses CRRs as a financial hedge to lock in the price of congestion at the purchase price of the

CRR. DME also hedges congestion in ERCOT's Real-Time market by buying CRR-like instruments called Point to Point (PTP) Obligations.

The main purposes of the ERCOT CRR market are to:

- Support a liquid energy market by providing tradable financial instruments for the hedging of transmission congestion charges
- Allow market participants to eliminate or greatly reduce the cost uncertainties resulting from transmission congestion charges
- Encourage competitive energy trading, where the costs of congestion might otherwise be an impediment

DME's primary objective for hedging congestion risk is to mitigate potentially adverse financial consequences from uncertain price differences caused by transmission congestion between the location where it consumes power (ERCOT LZ_North), the locations where it purchases power on a forward basis (EROTT North Hub), and the ERCOT nodes associated with its resources (Denton Energy Center, Blue Summit & Santa Rita Wind farms, Blue Bell and Longdraw solar farms and future renewable resources).

DME is exposed to transmission congestion risk for all amounts of energy forecasted to be consumed in the ERCOT North Load Zone, and energy that could potentially be produced at their respective resource nodes. By default, ERCOT charges all DME load for energy, along with any congestion, in the Real Time Market ("RT"). DME mitigates congestion risk with congestion hedges using Congestion Revenue Rights (CRRs).

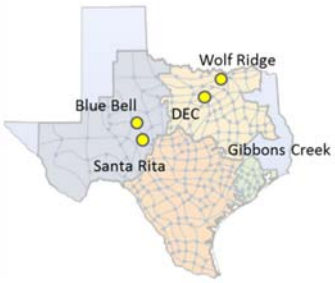


Figure 1

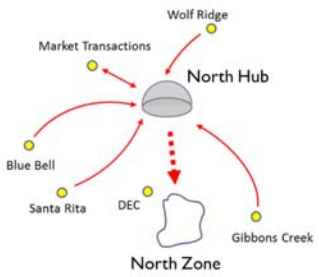


Figure 2

DME hedges congestion risk between each resource and ERCOT's North Hub location, and between North Hub and North Load Zone, by participating in ERCOT's annual and monthly auctions, layering in CRR purchases for up to 3 years into the future. The North Hub is also used as a delivery point for bilateral trades (for liquidity purposes)

Consistent with DME's approach to hedging energy, DME seeks to acquire CRRs at steadily increasing amounts roughly corresponding to Auction Capacity Percentages, to diversify timing risk, similar to dollar cost averaging, and does not use event-driven trading to time the market, trading in and out of positions. DME employs a tiered approach in ERCOT's annual and monthly auctions[5].

B.5.3 Physical or Financial Natural Gas Transaction Limits

Title	Term	Lead Time	Transaction Size (MMBTU)
City Council	No Limit	No Limit	No Max
City Manager or RMC	≤ 8 Years	≤ 5 Years	246,000,000 per 36 month rolling average
DME General Manager	≤ 7 Years	≤ 5 Years	200,000,000 per 36 month rolling average
Executive Manager Power Supply	≤ 4 Years	≤ 5 Years	150,000,000 per 24 month rolling average
EMO Division Manager QSE Manager Trading Optimization Manager Senior Energy Trading Analyst	≤ 24 Months	≤ 36 Months	50,000,000 per 3 month rolling average
Energy Market Analyst Senior Energy Market Analyst	≤ 6 Months	≤ 24 Months	2,000,000 per month
Senior RT Trader RT Trader	≤ 2 Month	≤ 2 Months	N/A

Notes:

- Natural Gas transactions limited to the following locations: Henry hub or locations within Texas which are physically or financially correlated to DME energy costs

- Authorized products include natural gas, including both physical and financial derivatives. Financial derivatives may be over the counter Gas Futures and Options or Exchange Traded Products

B.5.4 Renewable Energy Credit ("REC") Transaction Limits

	Per Transaction Limits (up to)		
Title	Vintage	Volume	$/REC
City Council	No Limit	No Limit	No Max
City Manager	≤ 5 Years	9,500,000	No Max
DME General Manager	≤ 3 Year	5,750,000	No Max
Executive Manager Power Supply	≤ 3 Years	5,750,000	No Max
EMO Division Manager QSE Manager Trading Optimization Manager	≤ 2 Years	3,750,000	No Max

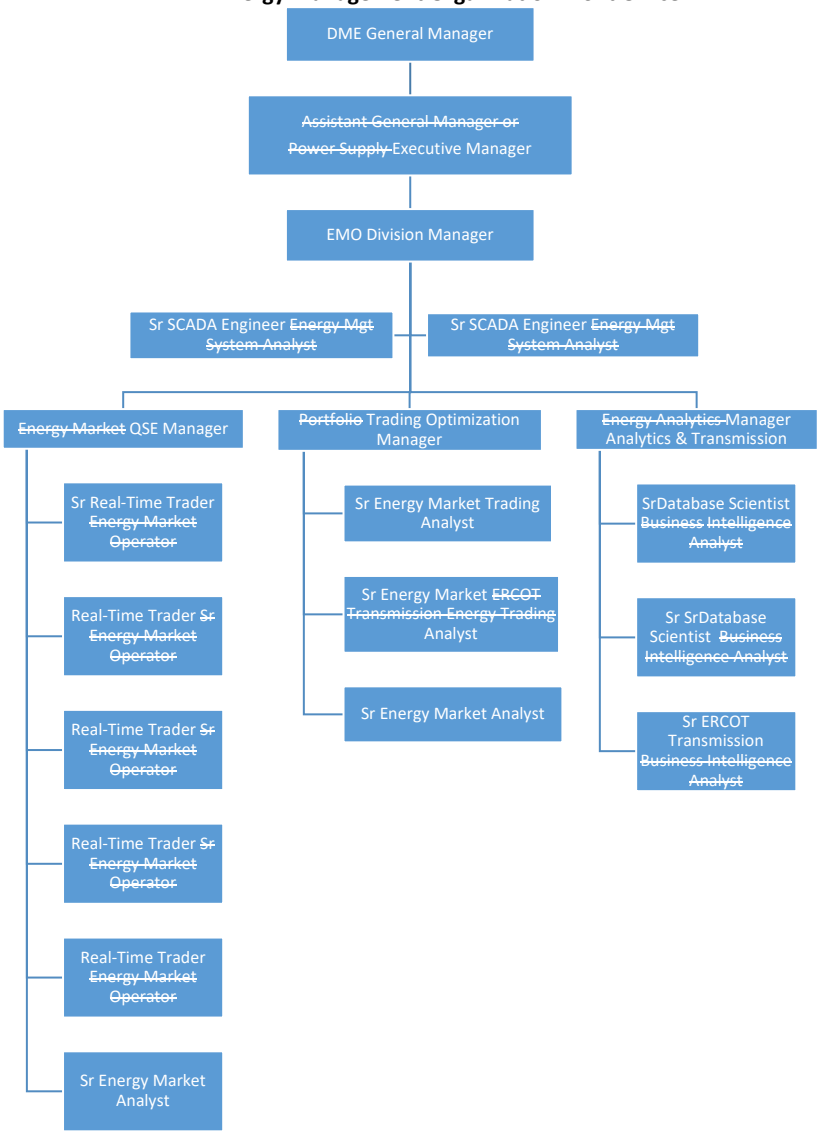
B.5.5 Ancillary Services Transaction Limits

Title	Term	Lead Time	Transaction Size (MW)	Cumulative Volume Limits (MWh)
City Council	No Limit	No Limit	No Max	No limit
City Manager or RMC	≤ 8 Year	≤ 7 Years	150	5,000,000 per 5 Full Calendar Years rolling average
DME General Manager	≤ 7 Year	≤ 5 Years	75	4,000,000 per 5 Full Calendar Years rolling average
Executive Manager Power Supply	≤ 4 Years	≤ 4 Years	50	8,000,000 per 3 Full Calendar Years or 36-month rolling average
EMO Division Manager QSE Manager Trading Optimization Manager	≤ 24 Month	≤ 36 Months	25	4,000,000 per 36 month rolling average

Sr Energy Trading Analyst				
Energy Market Analyst Senior Energy Market Analyst	≤ 4 Month	≤ 24 Month	10	50,000 per month
Senior RT Trader RT Trader	≤ 2 Month	≤ 2 Month	150	25,000 per week

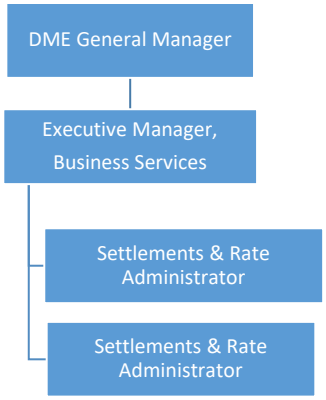
Appendix C ORGANIZATIONAL STRUCTURE

Energy Management Organization Front Office



Energy Management Organization Middle Office

Energy Management Organization Back Office



Appendix D APPROVED TRANSACTION TYPES

Products allowed for energy management activities include the purchase and sale of electric energy, ancillary services, natural gas and ERCOT Congestion Revenue Rights/Point to Point Obligations. The purchase and sale of Renewable Energy Credits are also allowed as needed to meet Denton Renewable Energy Plan goals. The City Council is responsible for authorizing all products and commodity types through this Policy.

All transactions must follow certain requirements as described throughout this Policy. Key elements include:

- All transactions must be executed to by authorized transacting personnel
- All transactions must be with approved counterparties and/or commodity exchanges
- All transactions must be with counterparties with adequate available credit or fully collateralized
- All transactions must be committed over recorded phone lines or via recordable electronic communications
- All transactions must be approved transaction types
- All transactions must be consistent with this Policy and the EMO Procedures Manual

Failure to observe the above minimum requirements when executing energy transaction is a violation of Policy and is subject to disciplinary action.

AUTHORIZED MARKETS

DME may only execute transactions to buy or sell energy-related products after some type of enabling agreement has been signed with a counterparty or commodity exchange. In approving this Policy, the City Council has authorized the City Manager, or their designee, to sign such agreements.

Examples of markets where DME is currently authorized to transact include:

- Intercontinental Exchange (ICE)
    - ERCOT Physical and Financial Power
    - Natural Gas futures

- Bilateral markets with approved counterparties
    - Physical Natural Gas at locations within Texas and Oklahoma to support fuel purchases for the Denton Energy Center and DME's energy portfolio
    - Physical and Financial Power
- ERCOT
    - Day Ahead Market
    - Real Time Market
    - Ancillary Services Market
    - Congestion Management Auctions and Markets

AUTHORIZED POWER TRANSACTIONS

Power transactions shall be limited to delivery or exposure to power within ERCOT. Before executing any of the following hedges FOR THE FIRST TIME, DME will provide notification to the Risk Committee, along with an explanation of the risks and benefits of expanding our use of hedging instruments.

1. Physical
    a. Fixed-price & Index-price purchases and sales to third parties or between internal DME risk books.
    b. Call & Put Options (e.g., fixed & indexed, hourly, Time of Use, daily monthly, annually)
    c. Ancillary services

2. Financial
    a. Fixed-price & Index-price purchases and sales
    b. Exchange traded, bilateral or OTC Call or Put options[6]
    c. Ancillary Services
    d. ERCOT Congestion Revenue Rights (CRRs), Point to Point Obligations (PTPs) and other similar congestion management transactions.

AUTHORIZED NATURAL GAS TRANSACTIONS

Natural Gas transactions shall be limited to Henry Hub or a location within Texas or Oklahoma to support commodity exposure for DME's energy portfolio. Before executing any of the

[6] For example, fixed & indexed, hourly, Time of Use, daily monthly, annual options

following hedges FOR THE FIRST TIME, DME will provide notification to the Risk Committee, along with an explanation of the risks and benefits of expanding our use of hedging instruments.

1. Physical Gas which may be needed to support operation of the Denton Energy Center
    a. Fixed and index price Natural Gas commodity
    b. Fixed and index price Natural Gas transportation
    c. Fixed and index price Natural Gas storage
2. Financial
    a. Exchange traded, bilateral or cleared futures and Exchange or OTC swaps
    b. Exchange traded, bilateral or cleared and or OTC Call or Put options[7]
    c. Index options

OTHER AUTHORIZED ENERGY-RELATED COMMODITY TRANSACTIONS

1. Tolling agreements[8] for use as a vehicle for executing the physical power and gas options mentioned above. They shall be structured as financially settled transactions using the Day-Ahead and real-time ERCOT settlement price.
2. Structured transactions[9]

3. Physical Renewable Energy Credits (RECs) including two prior vintage years and all forward years up to the tenor of vintage limits set in the table under section B.5.4 above.

4. Energy broker agreements - contracts used with energy brokers, who act as intermediaries connecting DME with energy suppliers who have existing master enabling agreements with DME to buy or sell energy or RECs . These agreements outline the services the broker will provide as well as the associated fees and obligations.

[7] Ibid.
[8] Tolling agreements are contracts where DME would essentially "rent" a power generation facility from its owner, paying a set fee to utilize the facility to convert fuel into electricity while retaining control over the operation and dispatch of the power generated.
[9] Structured contracts go beyond standard market contracts like futures and swaps and are tailored to address the specific risk profiles of the buyer and seller. They typically involve transactions where the quantity, duration or time periods do not line up with transactions regularly traded in over the counter markets or on commodity exchanges.

Appendix E FORWARD HEDGING STRATEGIES AND PLANS

Successful management of the price and volumetric risks faced by DME requires analysis, monitoring, and communication. Analysis of published weather forecasts and market price data serve as key inputs to models used for planning and ensures that the appropriate data is converted into useful information. Consistent with market risk policies defined herein and the risk limits defined in Appendix A, DME, in concert with the RMC, develops annual hedging strategies with underlying hedging plans as a means to manage the volumetric and price risks faced by the utility. A review of the status of current hedging plans will typically be a topic of discussion at RMC meetings.

Upon substantial edits, DME shall submit a confidential updated Hedging Strategy to the RMC for managing the key components of its energy portfolio (load, renewables, congestion risk and the DEC) for the upcoming three (3) full calendar years. Due to the complexity of the wholesale energy markets and the energy regulatory environment, the Hedging Strategy may require several iterations to the Hedging during each year due to market conditions. The RMC shall provide an update of its current Hedging Strategy to the PUB and Council as soon as practical after it has been approved. The Hedge Plan is a confidential strategy document and, if requested, will be presented to the PUB and City Council in closed session.

Commented [ML1]: I went with the substantial edits language here too. Let me know if you are okay with that.

Each Hedging Plan will:

- Cover a clearly specified forward time period.
- Explain the justification for the hedge (a general description of the resource mix and load that contribute to the open position for the specified time period, along with the Open Position tolerances for the specified forward time period).
- Define a volumetric limit for hedge purchases and sales.
- Document transaction types expected to be used to carry out the Hedging Plan.
- Proposed price triggers that will enable hedging activity within the Hedging Plan's limits.

DME may, at any time, request that the RMC consider changes to the current Hedging Strategy or to an individual Hedging Plan. Any approved changes to the Hedging Strategy or Hedging Plan shall be recorded in the RMC meeting minutes and an updated written Hedging Strategy or Hedging Plan document will be prepared as soon as practical incorporating such changes. All hedge strategy documents shall be confidential and not subject to the open record requirements due to the proprietary and commercial sensitivity of the plans. If it becomes apparent to DME management that additional transactions to reshape expected monthly forward positions are necessary given changes in generation forecasts, market conditions, and load forecasts, the DME General Manager may direct EMO staff to enter into

and execute such transactions to rebalance the forward position. These transactions will be discussed in RMC meetings ahead of time if conditions allow or reported after the fact and documented in the minutes of the next RMC meeting. Changes to the Hedge Plan outside the annual review and approval of the Energy Risk Policy does not require approval of the PUB and City Council. However, all transactions undertaken will still comply with the authority limits contained in this Energy Risk Policy.

Appendix F 2024 -2025 DME HEDGE PLAN

Hedge Plan Overview

The management of price and volume risk associated with the obligation to provide reliable, economically priced wholesale electric energy to the customers of Denton Municipal Energy ("DME") is one of the main responsibilities of DME. This responsibility is both a short term and long-term activity. Understanding the potential risks and their impacts along with executing hedging transactions (trades) that reduce or eliminate price risk while providing stable and predictable wholesale energy costs is the objective of the Hedge Plan.

The Hedge plan is a high-level summary and a tactical plan for managing the risks associated with the provision of energy and ancillary services required to meet the demands of the City of Denton, its residents and its businesses. Because the Hedge Plan lays out the specific risks and the plans to manage those risks into the future, it is a confidential document containing market sensitive information and is protected pursuant to Texas Government Code Section 551.086. The Hedge plan is however a component of the DME Risk Policy, and this summary is included to describe the purpose and methods that will be utilized by the EMO to remove risk from the power supply portfolio.

The Hedge Plan does not provide a comprehensive description of the day-to-day activities of the EMO, but rather provides a description of the risk reduction transactions that will be authorized for the EMO to execute. The intra-day optimization of positions for the benefit of customers and the required scheduling and interaction with ERCOT in its role as the transmission reliability entity of Texas will continue to be the primary focus of the EMO.

The uncertainty of load and renewable energy generation at any specific point in time coupled with the changing price for power at each delivery point (generation and load) every five minutes and the variability of natural gas price for the DEC make a single algorithm to determine hedge actions impossible. Consequently, DME will seek to de-risk the supply and demand component of its positions by looking at each position independently. Maximizing value and minimizing price risk to customers for each position is manageable and quantifiable and as such the Hedge Plan will be executed on a position-by-position basis. The main positions include Load; Renewable Energy Generation and associated basis or congestion positions; and the Denton Energy Center Position.

This Hedge Plan sets forth the types of risk-reducing transactions that are recommended, along with the execution and optimization strategies that will be employed by DME through the EMO department. All recommendations are based upon the risk positions that DME owns and their relative risk is the current forward markets. Forward markets change daily and on an intraday

basis and the Hedge Plan is intended to permit sufficient flexibility to the EMO personnel, consistent with the Risk Management Policy, to react to these market changes. However, the Hedge Plan sets specific targeted volumes for hedging each position by certain dates and with an objective for each set of trades entered into to reduce risk. The DME middle office will monitor compliance with the mandated activities in the Hedge Plan and will report on the compliance status on a daily basis to the front office and DME management. Any violations of limits or requirements in the Hedge plan and Risk Policy will be reported to the Risk Committee along with any recommended mitigation and disciplinary action if required.

Appendix G NEW PRODUCT/MARKET INSTRUMENT APPROVAL CHECKLIST

Checklist Items	Primary Accountability
Benefits	
Identify and describe the benefits of using the new product	Front Office
Risk	
Understand and document the payoff profile of the new product	Front Office
Identify and analyze credit risk of new product	Middle Office
Develop methodology for measuring credit risk of new product (mark-to-market, potential exposure, stress exposure.	Middle Office
Identify prospective counterparties for new product/instrument and determine credit suitability.	Front Office & Middle Office
Approve new product valuation methodology.	Middle Office
Determine if staff, systems, and management skill sets are sufficient for valuing and transacting new product.	Middle Office
Determine physical disposal or financial settlement requirements.	Front Office & Back Office
Determine stress test requirements for new product.	Middle Office
Define how stress testing must be performed (frequency, scope, independent source).	Middle Office
Financial	
Define the capital requirements (exchange margin or collateral) of the new product.	Front Office & Middle Office
Determine contract documentation required.	Front Office & Middle Office
Accounting, Tax, and Regulations	
Identify applicable U.S. and local regulatory restrictions for new product.	Back Office/City Finance
Determine regulatory compliance requirements, if any, for new product.	Middle Office & Back Office/City Finance

Review accounting policies and approve proposed treatment.	Back Office/City Finance
Determine audit requirements.	Back Office/City Finance
Consider tax consequences of new product.	Back Office/City Finance
Policy	
Verify counterparty authority to enter into contract for new product.	Middle Office
Develop and implement monitoring and review procedures to ensure Policy compliance.	Middle Office
Define procedures and responsibilities for independent verification of positions and market valuation inputs (prices, and volatilities if applicable).	Middle Office
Determine impact on position/risk limits/hedge targets	Middle Office
Determine and define procedures for confirmation and reconciliation of new product.	Middle Office
Verify that all groups involved in new product transaction procedures can handle anticipated transaction volume.	Middle Office
Determine and define management reporting requirements.	Middle Office

Appendix H ENERGY RISK MANAGEMENT POLICY ACKNOWLEDGEMENT FORM

The purpose of this form is to confirm that City of Denton employees involved with the Energy Portfolio Management program have received, read, and understand DME's Energy Risk Management Policy and appendices, and the City of Denton policies regarding employee conduct.

Employee Name: _____

Title: _____

Department: _____

Supervisor: _____

My signature below confirms that I have received, read and understand DME's Energy Risk Management Policy and appendices, and the City of Denton policies regarding employee conduct. I understand that my violation of the Risk Policy may result in disciplinary action that may include termination of my employment with the City of Denton.

_____
Signature of Employee

_____
Date

Denton Municipal Electric

Energy Risk Management Policy

Approved by the City Council of the City of Denton, Texas

City Ordinance No. 26-____

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SECTION 1 PROGRAM OVERVIEW

1.1 Introduction

The City of Denton's municipally owned electric utility, operated under the trade name of Denton Municipal Electric ("DME"), is in the business of providing affordable and reliable energy and energy services to its customers in an environmentally sustainable manner. This Energy Risk Management Policy ("Policy") has been developed to establish a comprehensive framework for DME to meet and exceed the overall goals and objectives set by the City Council, subject to approved risk tolerances.

This Policy provides specific controls (e.g., segregation of duties, oversight, etc.) for the management of strategic and operational risks and establishes guidelines for DME to plan, execute and control the risks inherent in the generation, purchase and sale of energy for its retail customers. The resulting framework shall govern DME's energy portfolio activities through which City Management and DME personnel identify, capture, measure, manage, control, monitor and report financial and other risks. This Policy specifically addresses management of energy portfolio risk and provides a framework to maintain proper controls over portfolio activities as they change over time.

1.2 Objectives

The objectives of this Risk Policy are as follows:

1. Identification of inherent risks associated with procurement of energy and ancillary services to serve the retail load of DME's customers.
2. Periodic and consistent measurement and reporting of risks
3. Establishment of acceptable risks levels
4. Identification of authorized risk management transactions, volumes, terms and authority levels for all employees, committees, and boards involved in execution of risk management transactions.
5. Establishing disciplinary actions for violation of risk management policy including trading limits

DME's energy portfolio consists of its assets such as power plants, power supply contracts of varying delivery patterns and maturity, wholesale physical and financial hedges[1], congestion management trades, ancillary service requirements and retail load obligations. A number of inherent risks are associated with DME's energy portfolio, including market (price) risk, volumetric risk, operational risk, organizational risk, counterparty credit risk, liquidity (funding)

[1] As used in this Policy, physical and financial hedges are market transactions used to offset pre-financial existing risk in the portfolio and are generally used to reduce price exposure associated with DME supply and demand, price volatility or transmission congestion.

risk, and regulatory/legal risks (for more detail, see Appendix A for a summary of DME's portfolio risks).

DME manages these risks to achieve its core business objectives of delivering energy to its customers at reasonable and stable rates. Key risk management objectives and performance measures are shown in the table below.

Objective	Performance Metric
Reduce price and volumetric risk	Reduction in exposure to price volatility and volumetric variability
Competitive costs	Comparison of actual energy costs (including hedges and ERCOT balancing transactions, but excluding PPAs) to the average annual ERCOT Day Ahead Market (DAM) price, plus a hedging premium
Reasonable rates	Comparison of DME average rate to that of other Texas municipal utilities
Risk Policy Adherence	Identification, reporting and disciplinary action of policy violations

1.3 Energy Risk Management Framework

DME's Energy Risk Management Policy is built around a framework that includes the following four elements: Organizational Objectives, Risk Mitigation, and Measurement, Portfolio Management and Risk Control Infrastructure. Each of these elements is discussed further below.

1.3.1 Organizational Objectives

The Risk Management Committee ("RMC") approves goals, strategies, and objectives which help define the appropriate portfolio management activities that are undertaken by DME. This is done in coordination with strategic and business planning activities conducted to establish the budget and through periodic strategic planning activities.

1.3.2 Risk Mitigation and Measurement

As part of clarifying organizational objectives, this Policy defines the Energy Management Office's ("EMO") role in identifying, measuring and mitigating energy risks. DME's risk mitigation practices focus on implementation of the approved Hedge Plan for mid to long term risk mitigation and inside the month risk management activities to meet required targets, along with transaction and risk exposure limits.

1.3.3 Portfolio Management

DME engages in transactions that are conducted in accordance with hedging targets and risk management and transaction limits specified in connection with this Policy and in broader DME policies and operating procedures.

1.3.4 Risk Control Infrastructure

DME maintains a collection of internal controls, systems, and processes necessary to achieve the objectives of this Policy. These controls comprise DME's energy risk control infrastructure and includes provisions for:

- Energy Risk Management Organization Structure and Responsibilities
- Transaction and Risk Exposure Targets and Limits
- Portfolio Position Tracking
- Risk Measurement and Mitigation
- Performance Measurement
- Management Reporting
- Operating Procedures

1.4 Procedures and Guidelines

This Policy prescribes the management, organization, authority, processes, tools and systems to monitor, measure, control and mitigate market risks through DME's energy management activities. Upon adoption by the City Council, this Policy shall be implemented through a supporting set of standard operating procedures ("EMO Procedures Manual"). The operating criteria and parameters shall be updated as necessary to reflect changes in market conditions and staffing levels. All standard operating procedures shall be approved by the RMC.

All departmental procedures that may impact DME's energy portfolio shall be in full compliance with this Policy. DME executive management shall evaluate the degree of detail necessary in the operating procedures and may require that additional procedures be developed and implemented.

SECTION 2 ORGANIZATION STRUCTURE

2.1 Risk Management Committee ("RMC")

While the leadership of the Front, Middle and Back Office groups, along with the DME General Manager regularly review executed transactions, monitor proximity to transaction limits and oversee the implementation of DME's portfolio management activity, consistent with industry best practices, the executive oversight of DME's energy management activities is conducted through the Risk Management Committee ("RMC"). The RMC is also responsible for activities governed by this Policy and ensuring that Policy requirements are met. The RMC membership is to be comprised of five voting members and two non-voting members.

2.1.1. Risk Management Committee Responsibility

The RMC has the responsibility for executive oversight over the Program, which includes:

- Understanding DME's risk management objectives as described in Section 1.2 above and risk tolerances as described in Appendix B.3 and B.4.
- Approving annual risk plans, targets and limits as reflected in DME's proposed annual budget and Hedge Plan.
- Ensuring Program strategies are consistent with overall City goals and obligations.
- Reviewing this Policy at least annually and making recommendations for changes to the City Council and Public Utilities Board.
- Reviewing and monitoring DME's progress in managing its hedging plans/targets as described in Appendix E and proximity risk exposure limits specified in Appendix B.3.
- Understanding and discussing DME's energy-related financial risk exposures and DME's strategies for monitoring and controlling these exposures.

2.1.2 Risk Management Committee Structure

The voting members are:

- PUB Chair (or designee)
- City Manager (or designee)
- DME General Manager (Chairman)
- Executive Manager, Operations (or designee)
- City's Director of Finance (or designee)

The non-voting members, both acting solely within their respective responsibilities set out in the City's Charter, are:

- City Auditor (or designee)
- City Attorney (or designee)

2.1.3 Meeting Frequency, Voting, Member Vacancies and Reports

1. As needed, but no less than quarterly, the RMC shall meet to review EMO operations as described in Section 4.2. The Chair of the RMC shall provide at least five (5) business days' notice to the members.

2. Any member of the RMC can request a meeting to address circumstances or issues that may require immediate attention.

3. As needed, but not less than annually, the RMC reports results of DME's energy management activities and compliance with this Policy to the Public Utilities Board and the City Council

4. Each of the five voting members shall have a single vote on matters that come before the RMC and a voting member, or designee, must participate in the RMC meeting in order to vote and approve a proposed action. If a voting member is unable to attend an RMC meeting in person or by telephone, the member may designate an alternate to vote in his or her absence. A quorum of at least four (4) voting members is required for a vote to take place. The RMC makes decisions and take actions by a simple majority vote. If the RMC reaches an impasse that cannot be addressed through a vote, the DME General Manager may make a final decision by the end of the next business day on the issue and shall immediately notify all RMC members by email.

5. In cases where a member of the RMC leaves the employ of the City, the City Manager, upon consultation with the DME General Manager, will resolve the RMC vacancy by making an interim appointment at their discretion.

6. A standard set of reports shall be prepared and distributed by the Chairman in advance of each RMC meeting. The DME Compliance Officer, or their designee will act as Secretary to the RMC and will document all meetings and actions taken by the RMC in meeting notes that will be distributed to RMC members for their review and acceptance. Risk Policy compliance and risk position reports will be presented the RMC in a form that is approved by the RMC and which may be amended as determined necessary by the RMC. When establishing the standard set of reports, the RMC will consider the requirements set out in 2.1.3.

7. Meeting notes approved by the RMC will be distributed by the City Attorney to the RMC members, the City Manager, City Council and PUB.

8. As Chairman of the Risk Management Committee, the DME General Manager is responsible for all DME energy management activities, including the day-to-day efforts of the risk control function. At a high level, these responsibilities include understanding and measuring market risk, validating risk mitigation activities, hedge strategy compliance and risk reporting.

2.1.4 Third Party Review of Energy Management Office; DME Cooperation with Consultant

1. DME may employ a consultant periodically to provide an independent review to the RMC including, but not limited to:

    - Assessment of energy markets including energy news and counterparty information relevant to DME's risk management and hedge positions
    - Independent monitoring of DME's risk and policy limits as defined and approved in this policy
    - Review of DME's front office hedge strategy and recommendations for potential improvements
    - Independent review of DME's executed hedge positions for compliance with this policy
    - Review of DME's hedge positions and portfolio, including review of
        - Risk report
        - Position reports
        - P/L reports
        - Counterparty exposure reports
        - Settlements reports
    - Support in the ongoing development of DME's RMC standard set of reports
    - Performance of a cost benchmark analysis.
    - Review of Middle and Back Office functions.
    - Other tasks and responsibilities as may be determined important by the RMC.

2. DME shall cooperate with all requests of the consultant.

2.2 Front, Middle, and Back Offices

The "Front-Middle-Back Office" model provides for segregation of duties and efficient administrative support. It is a way to segregate DME energy management activities into

transactional ("Front Office"), independent risk control and transaction compliance ("Middle Office") and financial, accounting, and contract administration support ("Back Office") functions.

2.2.1 Front Office

The Front Office is primarily responsible for managing the energy supply portfolio associated with DME's wholesale market activities and directing its daily physical and financial trading.

The Front Office directly executes physical or financial transactions to support activities such as management of fuel, power, congestion, ancillary services, environmental attributes, and wholesale sales activities as well as develops measurable hedge strategies and plans at least annually (see Appendix E for details on hedging framework).

Specific responsibilities of Front Office personnel include:

1. Developing and implementing strategies that are consistent with program objectives and this Policy.
2. Monitoring the energy markets including determining the forward prices for products traded by the EMO ("marking curves") structural/regulatory changes, counterparty activity and financial wherewithal, market liquidity, and new supply and hedging instruments.
3. Advising the RMC of significant changes in the market and in the liquidity of approved hedging instruments, along with advising the RMC of the need for seeking Council approval of new hedging instruments that may help DME achieve its risk objectives. New hedging instruments shall be approved based on the guidelines shown in Appendix G – New Product / Market Instrument Approval Checklist.
4. Managing the portfolio of positions in physical and financial energy and energy-related commodities in a manner consistent with DME's risk management objectives and the corresponding Hedge Strategies contained in Appendix E – Forward Hedging Strategies and Plans.
5. Executing physical and financial transactions with approved counterparties through the appropriate exchange, broker, voice communication, email, etc.
6. Recording details of financial and physical transactions for DME's ETRM system.
7. Ensuring that transactions comply with this Policy.
8. Functioning as the primary point of contract and as an active participant in the ERCOT stakeholder processes.

The Front Office oversight role is accomplished through supervisory review and approval. DME's Front Office consists of Market Operations and the Market Analytics group and reports to the Assistant General Manager or the functional manager of the EMO.

2.2.2 Middle Office

The Middle Office is responsible for monitoring compliance with this Policy, for determining that energy transactions and exposures are within authorized limits and meet minimum targets, identifying any violations of the limits in this Policy and reporting any such violations to the General Manager and or Assistant General Manager, and for reporting the market exposure associated with all transactions entered into by the Front Office on an ongoing basis. The Middle Office is also responsible for credit risk management activities, including vetting and due diligence of counterparties, negotiating enabling agreements, establishing credit limits, quantifying the level of acceptable credit and market risk and providing estimates of key credit risk drivers.. If, in the opinion of the Middle Office, hedge decisions do not achieve program objectives, the Middle Office will determine why the objectives are not achieved and recommend to the General Manager, changes to existing and proposed hedge transactions and positions. In the event there is no consensus between the Front Office and the Middle Office, the Middle Office will recommend changes to the RMC on potential changes to the hedge transactions and the rationale for such recommended changes.

The Middle Office responsibilities include monitoring DME's energy management risk exposures and mitigation measures and ensuring compliance with policies, guidelines, and procedures. In connection with this responsibility, the Middle Office maintains a compliance log of any operational and/or procedural violations, which will be reported to the RMC each quarter. Alleged violations of and policy or procedures will be immediately reported to the General Manager and the Assistant General Manager.

Additionally, the Middle Office is responsible for recommending to the RMC when changes in policy or operating procedures are required. These recommendations may involve the temporary or permanent halting of transactions with one or more counterparties, and any other topic the Middle Office believes represents potential unacceptable risk exposure.

The Middle Office adopts and updates, as necessary, the Energy Risk Management Policy after such updates are adopted by the RMC, guidelines and procedures so that portfolio management functions occur in compliance with Energy Risk Management Policies and energy risk procedures and guidelines.

Specific responsibilities of the Middle Office include the following:

1. Verifies and reconciles physical and financial transactions, including conditions, quantities, and amounts to be paid and dates. The Middle Office collects and validates market quotes to mark portfolio positions and to ensure that the terms recorded and understood by DME match the terms actually agreed upon with counter parties and/or brokers.
2. Prepares position reports identifying the financial positions, physical positions, anticipated physical exposures, and the market value of the energy portfolio(s) on a position-by-position and aggregate basis.
3. Maintains risk measurement, performance, and valuation models, including various stress tests.
4. Prepares routine risk reports, including those identified in Section 4.2 – Required Reports.
5. On a daily basis, confirms that all exposures and activities comply with authorized market instruments as contained in Appendix D – Approved Types, the risk limits as contained in Appendix A – Risk Exposure and Transaction Limits and hedge coverage targets as contained in Appendix E – Forward Hedging Strategies and Plans. In doing so, the Middle Office monitors transactions and position limits, review daily positions, and activity reports, and ensures that trading instruments comply with current hedging strategies and are permissible.
6. Follows the remedial actions process in the event of any risk limit or hedge target breaches.
7. Ensures all transactions comply with this Policy.
8. Executes and sends written confirmations to counterparties to ensure terms and conditions are mutually agreed upon.
9. Manages the credit risk associated with DME's energy portfolio, including reporting current and potential future credit exposure, credit positions relative to authorized limits and changes to the credit risk profile of DME counterparties.
10. Maintains all counterparty enabling agreements and ensures that only enabled counterparties are populated and authorized in the system of record.

The Middle Office reports to the DME Regulatory & Risk Division Manager.

2.2.3 Back Office

The Back Office's primary responsibility is to ensure that financial records of DME's energy management operation accurately reflect the current state of energy risk management and power supply portfolio management activity. The Back Office is responsible for invoice checkout, verifying supply payments, invoicing, and settlements. The Back Office is also responsible, in coordination with City of Denton Finance, AR, and AP departments, for accurately calculating and booking the financial results of energy transaction activities,

billing, and accounts payable, as well as recording, reporting and accounting for risk management and hedging. Specific responsibilities of the Back Office include the following:

1. Supports accounts payable and receivable operations.
2. Coordinates with City Finance the recording of all revenue and expenses in the general ledger and other subsidiary ledgers when appropriate.
3. Coordinates the recording of posted cash receipts and revenues with City Finance to the appropriate subsidiary ledger.
4. Settles transactions (verification, accounts payable/receivable)
5. Develops and maintain documentation outlining standard procedures for performing the settlement functions described herein.
6. Notifies the Front Office, Middle Office, and the General Manager of any discrepancies that result from the reconciliation process.
7. Oversees the safekeeping of transaction-related documents.
8. Maintains funding and reconciles and records activity in cash accounts held with other ERCOT and other market participants.

The Back Office reports to the Business Services Division Manager.

SECTION 3 MARKET RISK PROTOCOLS AND EXPOSURE CONTROL

3.1 Market Risk Protocols

The following market risk protocols shall govern DME's participation in wholesale energy markets. Specific limits, methodologies, reports, operational procedures and approval processes are detailed in the EMO Procedures Manual.

- DME will ensure that it has full knowledge of its energy portfolio position and the resulting exposure and understands the implications of its energy management activities.
- Only personnel authorized by the DME General Manager, or their designee, pursuant to a written Delegation of Authority Memorandum or email copied to the middle office can transact on behalf of DME in the wholesale energy market (see Transaction Limits section of Appendix B).
- Personnel involved with DME's energy management activities will ensure they obtain competitive prices, transact based upon competitive market conditions and that counterparty credit risk is diversified by setting up master enabling agreements [such as the International Swaps and Derivatives Association, Inc. (ISDA), Edison Electric Institute (EEI), and the North American Energy Standards Board (NAESB)].
- DME may only transact in wholesale energy-market products authorized by this Policy and at retail price levels stipulated in the current rate manual or as approved by the PUB or City Council as applicable.
- DME may only transact within transaction limits approved and defined in this Policy.
- All energy transactions will be carried out on recorded phone lines, electronic trading platforms, via electronic media (including email and other online methods) or other media that can be recorded and documented.
- Metrics for assessing DME's market risk exposure will be specified, measured, monitored, and reported on a regular basis to the RMC.
- On a daily basis, all wholesale market transactions are recorded in the official system of record which captures and reports physical and financial positions so that each can be reviewed separately and in total so that net volume and price risk and collateralization requirements can be accurately assessed and managed in real time. This system also serves as a central check and balance tool; therefore, allowing for reconciliation of physical and financial confirmations with transactional input. This system also produces and reports risk information.
- Models and inputs for valuation and risk measurement and mitigation shall be subjected to a validation and change control process. The models employed and associated processes shall

be described in detail in the EMO Procedures Manual.

3.2 Authorized Transactions

Authorized types of transactions are addressed in Appendix D of this Policy. These transactions types are, and shall continue to be, focused on supporting the energy portfolio goals of the City Council and this Policy.

3.3 Market Risk Control

An important element to any energy risk management and mitigation program is the regular identification, measurement, and communication of market risk. DME's net "open" position (i.e., whether it needs to buy or sell energy products on a daily, hourly, monthly or annual basis to balance the energy portfolio) and the market exposure associated with its net open positions shall be quantified and compared against exposure limits contained in this Policy and discussed, on a regular basis, with the RMC.

Market exposure associated with these net positions shall be quantified using forms of measurement approved by the RMC. The market exposure measurement criteria shall be reviewed at least annually and consider changes in DME's net positions and existing and projected market conditions. The Middle Office shall have primary responsibility for coordinating the development, maintenance, and modification all market measurement methodologies within DME and for recommending approval of these methodologies by the RMC.

3.3.1 Risk Tolerance

For the purposes of this Policy, DME's Energy Risk tolerance is defined by the degree of uncertainty that DME can accept in its future financial ratios and customer rates on a projected basis.

DME's Energy Risk tolerance and measurement of Energy Risk shall include "at risk" forms of risk measurement such as Cash Flow at Risk ("CFaR") or Value at Risk ("VaR"), augmented with scenario analysis and stress testing. These forms of risk measurement are described in more detail in Appendix A – Risk Exposure and Transaction Limits and in sections of the EMO Procedures Manual.

3.3.2 Transaction and Exposure Limits

The setting of and the adherence to transaction limits is an important control element to ensure DME does not assume greater aggregate energy market exposure than is intended and helps ensure that the transaction strategy level is appropriate at various levels of aggregation (e.g. by commodity, delivery period, strategy, energy portfolio, etc.).

Appendices B and D, along with the EMO Procedures Manual, contain the Approved Transaction Types and the Transaction Limits for DME. It is the responsibility of the Front

Office, Middle Office and the RMC to utilize these limits to manage and mitigate risk-taking activities. The Front Office shall be responsible for maintaining exposures within prescribed limits and for recommending changes to those limits to the RMC when market conditions or operating circumstances result in limits becoming ineffective or inappropriate in controlling these activities.

The Middle Office shall be responsible for monitoring compliance with the Transaction Limits and obtaining approval from the RMC for any changes to Transaction Limits or the Transaction Limit structure. It is the responsibility of the Middle Office and Front Office to ensure that Transaction Limits are strictly enforced.

3.3.3 Stress Testing

In addition to mitigating and measuring financial exposure using the methods above, stress testing is used to examine performance of the energy portfolio under extreme adverse conditions.

In stress testing, extreme market conditions are applied to the portfolio to determine how the portfolio will perform under such conditions. Stress testing requires thorough evaluation of past market periods to determine those that would represent severe outcomes. In addition, the performance of the portfolio is also estimated for individual and combined potential market conditions. Such conditions are intentionally chosen to represent adverse conditions and combinations of conditions, even if they are extremely unlikely.

The Middle Office shall design and maintain a stress testing program, in consultation with the Front Office. The stress testing approach shall be reviewed by the Middle Office regularly, and the stress testing program shall be presented to the RMC for review on at least an annual basis.

3.3.4 Model Validation and Controls

A risk commonly faced by those involved with energy management activity is *model risk*—the risk that either the methodology or assumptions used to value the portfolio becomes invalid. Inaccurate assumptions and incorrectly designed models can cause risk management problems in every market. However, the complexity of energy models and their extended lifetimes, make these problems especially common in the energy markets.

Model risk occurs primarily for two reasons:

- The model may have fundamental errors the user is unaware of and may produce inaccurate outputs when viewed against the design objective and intended business uses.

- The model may be used incorrectly or inappropriately.

Ensuring adequate model documentation is an important control for managing modeling risk. This requires both organizing model information and accountability from people using and developing models.

DME keeps a record of all internally and externally developed models used in its operation (see EMO Operating Procedures 1-4), including:

- a description of the information input component (assumptions and data used by the model, including quantitative approaches whose inputs are partially or wholly qualitative or based on expert judgment),
- version control (when key model inputs or model processes change)
- processing component (which transform inputs into estimates), and
- reporting component (which translates the estimates into useful business information).

The Middle Office will review and validate models used by DME and report to the RMC annually.

3.4 Information Systems and Models

Energy risk management information systems consist of the data, models and other software and hardware used to collect, analyze, test, and validate transactions within DME's portfolio in order to monitor and control risk. Although various departments within the City of Denton or DME may have responsibilities for using and maintaining DME's risk management systems, the Middle Office shall have overall responsibility for ensuring that the systems are sufficient to perform the risk management functions outlined in this Policy.

As part of a service level agreement with the City of Denton Technology Services, the Middle Office shall also be responsible for maintaining the security, integrity and reliability of the software used for energy risk management purposes (e.g. valuation models, administrative and reporting software, energy risk management databases, etc.). Due to the commercially sensitive nature of the data in DME's energy risk management systems, access by DME employees shall be revoked immediately upon receipt of resignation notification.

In accordance with the service level agreement which is currently followed between DME and the City of Denton Technology Services, Technology Services shall be responsible for maintaining the integrity and reliability of the hardware used for both energy management and energy risk management purposes, including business continuity, disaster protection and recovery plans.

SECTION 4 RISK REPORTING

4.1 Risk Management Reporting Policy

Key to energy risk management is the monitoring of risks and the accurate and timely information that must be provided to all parties involved in any aspect of energy risk management to allow them to perform their functions appropriately. The separation of execution and reporting responsibilities is an industry best practice for ensuring that timely and accurate information is being reported.

4.2 Risk Management Committee Meeting Updates

Minutes and meeting materials from quarterly RMC meetings will be distributed to the PUB and Council for their review.

At a minimum, quarterly RMC meetings will include a review of the following topics:

Controls Compliance

Identification of any activities that have exceeded permissible limits. The General Manager or his/her designee will provide details of the causes of any limit violations, the measures taken to mitigate future violations and a report of any disciplinary actions taken as a result of such violations.

Hedge Target Compliance

Provides an update on progress on executing latest hedge plan execution timetable.

Portfolio Competitiveness

Provides a comparison of latest 12-month cost/MWH vs ERCOT spot markets (Day-Ahead and Real-Time Market) and compares the market value of renewable resources to their contract costs.

Credit Exposure

Identifies the credit limit for each counterparty, current level of exposure with the counterparty, and remaining available credit. Also includes an update on current ERCOT credit requirements and thresholds.

4.3 Transaction Valuation

DME's financial records will be maintained in full accordance with generally accepted accounting principles ("GAAP"), Government Accounting Standards Board (GASB) and will be consistent with FERC Uniform System of Accounts.

Front, Middle, and Back Office functions shall coordinate their efforts and maintain vigilance to ensure that DME's energy management transactions and risk exposures are accurately valued in an unbiased manner. Transaction valuation and reporting of positions shall be based on objective, market-observed prices or models.

Open positions (i.e., whether DME needs to buy or sell energy on a daily, hourly, monthly or annual basis to balance customer loads against available resources) should be valued ("marked-to-market") daily, based on consistent valuation methods and data sources. Whenever possible, these valuations shall be based on independent, publicly available market information and data sources (e.g., Bloomberg, Reuters, NYMEX, ICE, broker quotes, etc.).

As noted in Section 2.2.2, the specification of position valuation methods is the responsibility of the Middle Office and is subject to RMC review. The Middle Office is responsible for obtaining and disseminating market pricing information (Section 2.2.2, item 2, page 13) in a timely and consistent manner, along with maintaining and updating transaction data and information sources used for trade evaluation (Section 2.2.2, item 1, page 13). The Middle Office is also responsible for assuring that data used for energy risk management calculations represent accurate and timely information available from reputable market or internal sources (Section 2.2.2, items 1 and 2, page 13).

SECTION 5 OTHER RESPONSIBILITIES AND POLICIES

5.1 Organization-Wide Responsibilities

It is the policy of DME and the City of Denton that all personnel adhere to standards of integrity, ethics, conflicts of interest, compliance with statutory law and regulations and other applicable standards of personal conduct.

The willful misrepresentation or concealment of information regarding portfolio management and/or risk management activities from senior management or any person responsible for the accurate tracking and reporting of such activities shall result in disciplinary action up to and including termination in accordance with DME and City of Denton policies and possible legal action as allowed or required by law.

As an employee of the City of Denton, all DME personnel involved with its energy management activity should not have an expectation of privacy in the conduct of their duties. At any time, recorded phone calls and electronic transactions, emails, texts, etc. may be reviewed to ensure appropriate conduct or to review transactional information.

5.2 Commercial Interests and Trading for Personal Accounts

All DME personnel who have any specific responsibilities delineated under this Policy or in the EMO Procedures Manual, are prohibited from engaging in the activities listed below:

- Physical or financial trading of any commodities stipulated in this Policy or in supporting departmental procedures for their own account

- Holding an undisclosed interest in any account or corporate entity (other than DME), which is used to trade the commodities described above.

If there is any doubt as to whether a prohibited condition exists, then it is the employee's responsibility to disclose and discuss the possible prohibited condition with their supervisor. In addition, any employee receiving taxable income from any person or business doing business with DME must file a Conflicts Disclosure Statement in accordance with Chapter 176 of the Texas Local Government Code. Failure to comply with these requirements may result in disciplinary action up to and including immediate termination of employment, in accordance with DME and City of Denton policies.

5.3 Acknowledgment of Policy Requirements

All DME personnel connected with the energy risk management program must sign a statement attesting that they have received, read, and understand this Policy document and the City of Denton policies regarding employee conduct. A sample statement is provided in Appendix G.

5.4 Adoption of Energy Risk Management Policy

This Policy shall be formally reviewed, approved and adopted by ordinance of the City Council upon substantial edits to the Policy.

SECTION 6 CREDIT RISK POLICY

6.1 Introduction

The purpose of this credit risk policy is to establish a consistent process whereby the credit risk of future financial loss due to counterparty physical or financial non-performance is significantly diminished for energy purchases and/or sales. This objective will be accomplished by a pre-contract qualification and ongoing review process for all energy suppliers and/or purchasers in combination with effective on-going monitoring systems and established limits. Any energy transaction conducted by DME will comply with this Credit Risk Policy.

6.2 POLICY OVERVIEW

In general, all energy suppliers and/or purchasers will be subject to a financial review in accordance with DME's standards for determination of creditworthiness. Evaluation of a counterparty's financial health and its ability to deliver its product or to pay is crucial. Such review procedures prior to contract execution are designed to protect DME from undue exposure to losses that could arise from an insolvent counterparty not being able to pay for energy that they have purchased or to cover replacement costs incurred for term contracts that have positive economic value in relation to current market prices. A credit review cannot be viewed as the only mechanism to prevent any and all losses, but it can help identify those counterparties where performance has been a problem in the past or may present a problem in the future. Established limits combined with proper monitoring systems will help enable DME to effectively mitigate possible losses due to counterparty insolvency.

6.3 Credit Risk Control

Credit Risk is the potential impact on DME's financial performance due to the chance of non-performance in payment or delivery (either physical or financial) by an energy entity that has executed a commercial agreement with DME to buy and sell energy ("counterparty").

DME actively mitigates its energy credit risk by making informed decisions regarding which counterparties to transact with and to what degree. Credit risk is defined as the risk of counterparty nonperformance, or failure to deliver its obligation (whether with an energy product or the payment of amounts owed).

6.3.1 Credit Policies

DME mitigates its energy credit risk by:

- Incorporating the expected transacting volumes, timing, and expected energy prices, when establishing an energy credit risk tolerance for a calendar year.

- Assessing counterparty creditworthiness and establishing credit limits for counterparties based on that assessment.
- Requiring a counterparty to be assigned a credit limit prior to transacting with it.
- Monitoring and assessing market and counterparty events to adjust credit limits as appropriate.
- Calculating and reporting the maximum expected loss if a counterparty defaults ("counterparty credit exposure").

6.3.2 Credit Limits

The EMO Procedures Manual includes a credit limit framework for DME's counterparties based on various factors such as debt ratings and financial statistics. Specific counterparty credit limits include consideration of financial ratios, audited financial statements, and asset quality. Credit limits and credit exposure based upon the trades in place with each counterparty and the market price for the net long or short positions with each is measured every day by the Middle Office. At least semi-annually the credit strength of each counterparty that DME is exposed to will be evaluated by the Middle Office, or immediately if their business conditions change or their credit rating has been downgraded and negative changes that have the potential to increase DME's credit risk will be reported to the RMC.

Prior to execution of any transaction with a counterparty, the Front Office verifies that the counterparty has available credit. In addition, no transaction shall be executed that will cause the counterparty credit limit to be exceeded unless explicitly approved by the RMC.

6.3.3 Counterparty Credit Function

The counterparty credit function includes counterparty credit analysis and approval of new and existing counterparties as well as the calculation, aggregation, monitoring and reporting of credit exposures. In addition to those activities mentioned in section 3.1, the Middle Office manages DME's credit function.

The objective of the counterparty credit function is to minimize the potential adverse financial impacts on DME in the event of a potential default by a counterparty. This is accomplished by:

- Establishing a credit risk mitigation structure within the energy risk management program.
- Providing a framework to enable DME to qualify energy suppliers and transact with approved counterparties.

- Determining counterparty transacting parameters ("transaction limits") to conservatively control and measure DME's exposure to any one supplier.
- Implementing conservative business processes and procedures (to be included in the EMO Procedures Manual) to gather and monitor financial information on each counterparty to estimate counterparty credit exposures.

6.4 Counterparty Credit Risk Assessment & Management

Counterparty Credit Risk (CCR) is defined as the risk that the counterparty to a transaction could default before the final settlement of the transaction's cash flows, where an economic loss would occur if the transactions (or portfolio of transactions) with the counterparty had a positive economic value at the time of default, or during the close-out period.

6.4.1 Counterparty Credit Rating

- A counterparty's credit rating is the basis for measuring its credit quality. DME assesses counterparty credit risk based on the latest ratings from the following external credit assessment institutions: S&P, Moody's and Fitch. If no external credit rating is available, the Middle Office will assess a counterparty's credit quality and approve an internal rating.
- If there are multiple ratings, the following rules shall apply: (i) If there are two ratings by external credit assessment institutions and the two ratings differ, the lower rating will be applied; (ii) If there are three ratings and they are not all equivalent, the rating in the middle shall be applied
- Whenever there is a rating change from an external credit assessment institution, the related counterparty's rating must be updated.
- It is important to recognize the limitations of externally produced credit ratings. Counterparties are the ones who are actually pay for a credit rating, the primary purpose of which is to facilitate their own borrowings and investment. Credit ratings agencies are not responsible for verifying the accuracy of the financial data supplied to them. For this reason, the Middle Office will also produce its own internal credit rating.
- The Middle Office will assess each counterparty's credit limit, using a broad analytical framework that includes:
    - Counterparty specific information (business activity; capital, leverage and earnings; risk position; funding and liquidity; ownership structures)
    - Macro factors (evaluate economic, industry and sector risks) and
    - External factors (parent/group support and government support)

6.4.2 Credit Limit Management

- To be effective a credit limit is not a guideline but a "hard stop" control that needs to be taken seriously by all internal stakeholders. It is a disciplined approach taken to potential breaches, increases and renewals.

- A counterparty's credit limit represents the maximum committed exposure DME will undertake with each counterparty with regard to credit, which may be less than the applicable Collateral Threshold value in the associated enabling agreement.
- Once a counterparty has been determined to be creditworthy, Middle Office will propose a maximum Credit Limit for approval by the Risk Committee.
- Although a counterparty may qualify for a certain maximum Credit Limit, the types of products to be transacted, as well anticipated transaction volumes, terms and other business factors may prompt Middle Office to set a lower limit for Front Office trading activities with that counterparty that is considered more appropriate.
- Middle Office will closely monitor each counterparty's credit quality and will alert the Risk Committee to any downside risk such as credit rating migration, key financial performance deterioration, potential event on cross default, etc. Early actions such as limit adjustment and collateral monitoring shall be taken to actively manage credit and liquidity risk exposure.
- Middle office shall actively manage collateral and margin based on the terms stipulated in the Collateral Annex to relevant enabling agreements.
- In the case of a counterparty default, a workout team shall be established under the leadership of the Middle Office with staff members of the Front and Back Office, City Finance and City Legal to design a timely workout plan, including any necessary recovery actions.
- DME may trade with counterparties having sub-investment grade credit ratings or privately funded companies with no credit rating. However, entering into contracts with counterparties considered below investment grade or privately funded companies with no credit rating requires caution, greater business justification and should be accompanied by a greater level of monitoring.
- The Middle Office shall also monitor credit exposure on a portfolio level, including concentration risk.

6.4.3 Credit Limit Monitoring

The Middle Office will monitor the current credit exposure for each counterparty with whom DME transacts and include such information in the Current Counterparty Credit Risk Report which includes current counterparty credit exposure compared against limits and the limit assigned to Denton by the counterparty.

Current credit exposure is a measure of the known exposures and composed of two primary exposures – (1) realized exposure, and (2) unrealized or forward exposure. Realized exposure, a payable or receivable amount owed between counterparties, is a measurement of cash flow for billed and unbilled transactions. Unrealized or forward exposure is a measure of current unrealized exposure and includes the measure of a counterparty's incentive to fulfill contractual obligations. Unrealized or forward exposure measures the risk associated with having a payment default or the need to replace a transaction in the event of delivery default.

Appendix A PORTFOLIO RISKS

As an electric utility, participation in physical and financial energy markets exposes DME and its customer/owners to the risks of cost and pricing uncertainty, revenue and commodity market volatility, and uncertainty in meeting budget targets and the Energy Cost Adjustment (ECA) component of its retail rates. These risks may be broadly categorized into three risk categories: market, credit, and operational. Each category of risk is described below. The categories are not entirely separate: disruptions of planned operations, for instance, can expose a utility to the risk of having to execute unforeseen transactions during adverse market conditions.

The following section provides descriptions of the energy-related risks the Policy is intended to address.

A.1. MARKET RISK

DME manages energy purchases and sales with the goal of reducing the business risks associated with its obligation to serve energy to its customer/owners. These risks include volume-related and price-related risks.

A.1.1. Price Risk

Because of continual changes in the supply and demand for electricity, significant price changes can occur over a short time frame, otherwise known as price volatility. High price volatility means a high degree of uncertainty about the level of prices in the immediate time frame and the future. DME's price risk takes several forms, including: 1) exposure to changes in spot prices which DME faces in purchasing electric energy from the ERCOT market, 2) forward price risk of anticipated purchases or sales of power or fuel in the future and 3) the cost of energy-related products and services such as congestion revenue rights and ancillary services.

Price risk also includes the basis risk associated with potential differences in the price of a commodity between geographic locations that is inherent in the ERCOT and physical natural gas markets. For example, whenever DME must purchase power to satisfy native load requirements or is exposed to natural gas price uncertainty at various physical delivery points, DME is financially at risk due to the uncertainty in transmission or transportation costs between various locations.

A.1.2. Volume Risk

Volume Risk refers to uncertainty in the quantity of a commodity or service demanded, acquired, or supplied that has a potential economic impact. A primary volume risk for DME is the uncertainty associated with the amount of load DME will be required to serve. Weather conditions affect customer energy usage, and weather changes make forecasting of load and non-dispatchable resources a challenge, causing actual quantities to deviate from forecasts. Forced or unexpected outages of generation resources also impact DME's volumetric risk. Generation levels from renewable energy resources are based upon the weather conditions experienced at the location of the renewable resources. EMO Operating Procedures 1-4 contain details about DME's processes for developing forecasts of expected volumes associated with its portfolio of load and resources.

A.1.3. Liquidity Risk

DME transacts business in commodity markets that have inherent liquidity risk. Liquidity risk for DME arises when its intended transaction quantities exceed the size of current market bids (to buy) and offers (to sell). When DME desires to execute a transaction for a volume/quantity in excess of current market bids or offers, potential counterparties may be unwilling or unavailable to transact with DME. Transactions of nonstandard sizes and types also present liquidity risks.

Liquidity risk should also be considered with regard to positions thought to be offsetting, but that may become open in the event that a counterparty defaults on their transaction responsibility (also referred to as "default risk"). It may be difficult to replace defaulted transactions on short notice. If a position must be covered quickly, the price of the necessary replacement transaction can be worse than if no urgency existed, especially if the potential counterparties know about the urgent need, putting DME as a significant disadvantage.

A.2. CREDIT RISK

DME is at risk if a customer, supplier or trading counterparty is unable or unwilling to fulfill its present or future contractual obligations to deliver power or fuel, or to make a timely payment of invoices or collateral.

A.2.1 Credit Risk

Credit Risk equals the potential replacement value of counterparty contractual obligations to deliver or receive power or fuel, or to make a timely payment to settle a

financial contractual obligation. The potential financial impact from counterparty defaults is significant. DME's credit risk is addressed in a separate Credit Risk section of this Policy.

A.2.2. Funding Risk

Funding risk is related to credit risk. This term refers to the risk that DME might have to pay margin or post collateral to meet requirements to securitize its credit under credit provisions of Power Purchase Agreements, wholesale energy market, or to meet margin requirements for cleared contracts. In the event of significant funding risk associated with the default of a counterparty or the inability of the DEC to produce energy resulting in large replacement energy costs, the City of Denton's reserves would be required to provide cover costs.

A.3. OPERATIONAL RISK

The term operational risk is often used as a catch-all category intended to include all risks that are not explicitly designated by other names, such as market risk, volume risk, liquidity risk, and credit risk. Operational risks include problems of several types that can have adverse financial consequences, and that relate to the operations of DME's energy portfolio, identification and control of risks, and processing and settlement of transactions. One such risk is Model Risk.

A.3.1. MODEL RISK

Model risk is a form of systems risk associated with unrecognized deficiencies of information systems used to in value transactions. A model may incorporate assumptions to derive unobservable pricing parameters from observable ones. There is a risk that a particular model used to value a transaction may not properly capture the value and risks of the transaction, and that its deficiencies may emerge only after the fact, following unfavorable market movements.

A.3.2. DENTON ENERGY CENTER OUTAGE RISK

A forced or unexpected outage of the DEC when the output from the units are anticipated to be used to hedge market price risk due to lower than expected renewable energy generation is an operational risk. This risk is mitigated by a) preventative maintenance programs designed to minimize forced outages b) not over-committing energy and capacity from the DEC during times of likely high prices, and c) the purchase of out-of-the-money call options. DME may also recommend to City Council the purchase of outage insurance for specific time periods during the year if, upon evaluating the results of a solicitation, DME determines the associated insurance premiums are economical.

A.4. REGULATORY RISK

Regulatory risk is the uncertainty to DME's performance due to potential changes in laws or regulatory mandates. Examples include, but are not limited to, the following.

A.4.1 Carbon Cost

Unless explicitly borne by an energy supplier, DME is exposed to the potential risk of carbon costs. Any applicable law, rule, regulation, ordinance, protocol, order, decree, judgment or other similar legal mandate could cause DME to pay carbon costs associated with the production, generation, sale, metering, measurement, transmission, storage or delivery of electric energy.

A.4.2 Changes to ERCOT market design

The PUCT has directed ERCOT to study the impact of changes to its market design, which could have a significant impact on the flow of dollars between suppliers and consumers of power, possibly triggering the need to renegotiate long-term power contracts and changing the valuation of existing generation assets.

A.4.3 Ongoing Changes to ERCOT Protocols

The rules under which ERCOT operates are in a constant state of change. In fact, they change so often that ERCOT's governing board has a committee (Protocol Revisions Subcommittee) that meets monthly to review and process proposed changes submitted by ERCOT and its market participants. These changes usually impact how costs are allocated within ERCOT among market sectors, consumers and suppliers of power, and individual market participants like DME.

A.4.4 Regulatory Compliance

Market Participants in the ERCOT region are subject to both state and federal laws and regulations.

Market Participants that own or operate facilities that are part of the Bulk Electric System, as defined in federal law, are subject to oversight by the Federal Energy Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), and Texas Reliability Entity, Inc. (Texas RE).

Additionally, all ERCOT Market Participants are subject to oversight by the Public Utility Commission of Texas (PUCT). The PUCT administers the Public Utility Regulatory Act (PURA), and adopts and enforces rules pursuant to the authority granted in PURA. The

PUCT also has oversight and enforcement authority over the ERCOT Protocols, Operating Guides, and Other Binding Documents. The PUCT has contracts with an Independent Market Monitor (16 T.A.C. §25.365) and a Reliability Monitor (16 T.A.C. §25.503) to assist with oversight and enforcement activities.

Appendix B RISK EXPOSURE AND TRANSACTION LIMITS

DME's energy supply, trading and risk management-related activities shall be segregated among a number of "risk books." A risk book is a way of classifying and tracking positions and transactions that have similar or directly related purposes so that value and risk can be measured in sufficient detail to support both risk control and transaction strategy decisions. The establishment and management of risk books enables the EMO to track costs and evaluate hedging effectiveness associated with specific parts of its energy portfolio.

B.1 Risk Books

Load Book
A Load Book captures all transactions (for prompt month or beyond) associated with hedging energy to serve city load.

Renewables Book
The Renewables Book captures the value of all transactions (for prompt month or beyond) associated with hedging long-term renewable energy positions.

Congestion Book
The purpose of the Congestion Book is to track the purchase and sale of CRRs and associated financial instruments (see Section B.5.2 below), which are traded in ERCOT auctions or in the ERCOT Day Ahead Market and used to hedge against transmission congestion risk.

DEC Book
The DEC Book includes hedge transactions (for prompt month or beyond) associated with the Denton Energy Center.

DEC Gas Book
The DEC Gas Book includes hedge transactions (for prompt month or beyond) associated with the Denton Energy Center's fuel costs.

Cash Book

The Cash Book captures physical and financial hedges with a duration of less than one month.

Large Load Book
The Large Load Book captures all the transaction associated with hedging DME's large load customers for prompt month and beyond.

Ancillary Services Book
The Ancillary Services book includes hedge transactions associated with hedging the cost of its natural short ERCOT ancillary services obligation.

EMO Wholesale Book
The EMO Wholesale Book is used to consolidate all external trades into a single book prior to being assigned to resource books.

B.2 Risk Exposure Limits

An essential control element in the management of market risk is the development and adherence to an appropriate limit structure. A well-designed limit structure helps ensure DME does not assume greater aggregate risk than intended and helps ensure that risk taking at the transaction strategy level is appropriate at various levels of aggregation (e.g., by commodity, delivery period, strategy, etc.).

The primary forms of limits listed below shall be applied to DME's energy management activity:

Rates at Risk – Rates at Risk ("RaR") is a form of Cash Flow at Risk (CFaR) measurement. RaR limits will be set to limit the amount of uncertainty in future rates over the immediately upcoming 12 to 36-month period. If uncertainty in future rate requirements is higher than DME's risk tolerance, DME will consider hedging or implementing other risk management strategies to reduce the potential need for unforeseen rate increases and/or deterioration of DME's financial condition.

Value at Risk –Value at Risk ("VaR") limits will be set to limit the potential loss in value of the portfolio.

Notional/Volumetric –To augment RaR and VaR limits, notional limits and/or volumetric limits will be established. Notional limits are specified based on transaction or strategy dollar amount (i.e., contract or strategy volume x price). Volumetric limits are specified based on volume (e.g., MW, MWH, MMBTU, etc.). This provides a concrete limit to account for uncertainties in risk measurement and human judgment capabilities. Other volumetric limits may be established in relation to specific risks not captured by RaR or VaR.

ERCOT – Implementation of the ERCOT Real Time Market (RTM) and Day Ahead Markets (DAM) require daily attention to Available Credit Limits (ACL) and forward liability calculations. The Back Office shall actively monitor and communicate any changes affecting current credit positions.

Stop Loss –Stop loss limits are set, such that, if an individual position or strategy (or a hedge transaction or strategy which has become ineffective, including optimization trades) is performing adversely and approaches a predetermined level of losses, the position or strategy must be liquidated or completely hedged to prevent further loss.

B.3 Portfolio Risk Exposure Limits

Because ERCOT is responsible for ensuring physical reliability of the grid, DME's efforts focus primarily on managing the rate impact of price volatility risk of its portfolio. For the purposes of managing this risk, DME will assume an average consumer risk tolerance (CRT) equivalent to 1 cent per kWh of load over a rolling 12-month period. For the avoidance of doubt, under the current DME rate structure, the CRT applies to the total average cost per kWh on an annual average basis for the residential class. A CRT in excess of 1 cent per kWh outside the 12-month rolling average will be reported to the RMC as soon as it becomes known to DME.

Hedging is DME's primary method for reducing market price volatility risk, either by locking in or limiting the amount of variation of a future market price. The "downside" of hedging is that it not only reduces the chances of incurring higher costs than expected, it also reduces the chances of lower-than-expected energy costs, and correspondingly lower electric rates.

DME uses an "at Risk"[2] methodology to estimate, at a 95% confidence level, the amount of an electric rate increase that could occur due to changes in market conditions such as volumetric risk associated with its renewable resources, ERCOT day-ahead and real time market price volatility, gas price volatility, nodal price congestion, price correlations and credit risk.

If DME's estimate of a rate increase, at a 95% confidence level, exceeds the CRT threshold by 25%, DME will meet and confer with the RMC within 2 weeks, and with the City Council and PUB as noted in the table below within 30 days after meeting with the RMC, to discuss alternatives for implementing additional hedging strategies to bring the level of possible price volatility back inside the CRT threshold. No particular portfolio action is required, making this notification requirement very different from a trading limit.

[2] The "at Risk" metric DME will use is based on a "Rates at Risk" (RaR) methodology, which refers to the statistical dollar amount that can be lost on the net open position of a portfolio over a specific time horizon and with a given confidence interval. DME's RaR methodology accounts for the increasing potential distribution of prices as time passes, as well as the expiration of the positions in the portfolio with the passage of time. The result is the estimation of loss, at the specified confidence level, assuming that the portfolio remains constant over time until all positions within it have expired.

"At Risk" limits for the total portfolio are:

	RMC Notification	Council / PUB Notification
Rolling 12 months (in aggregate)	$15.0 million	$19.0 million

B.4 Open Position Management

DME's primary objective is to protect against risks inherent in its portfolio, such as exposure to price volatility and from variability in supply and demand. DME plans to execute hedging transactions relatively evenly over time, to diversify timing risk (similar to dollar cost averaging) and does not speculate[3] . Market transactions shall be executed as a result of strategies designed to maintain the net open position (the gap between expected demand and committed supply) within tolerances which are consistent with current hedging strategies. The resultant net open position shall be updated to reflect the new hedging transactions as soon as practical, but generally no later than the next business day.

The hedge plan provides targets for hedging action of the DME's loads, renewable resources and the Denton Energy Center as a function of time for the next three years.

B.5 Transaction Limits

Another vital control element in the management of energy risk is the development and adherence to transaction limits. Transaction limits ensure the energy portfolio management function is prudent, deliberate, and controlled at various levels of position aggregation and transaction duration. Transaction limits are established in consideration of overall portfolio strategies, market conditions and risk tolerance levels and include the following principles:

- DME personnel involved with its energy management activity are authorized to execute any intra-day or day-ahead transaction which is necessary to mitigate market and financial risk exposure to DME customer/owners.
- Speculative transactions are those transactions not intended for hedging purposes and are strictly prohibited. For the avoidance of doubt, Optimization Trades as described in the Hedge Plan, are not classified as speculative transactions. All transactions shall either reduce risks or be risk neutral to DME customers.
- No transaction may be executed for which DME does not have adequate systems or analytical methods to track, record, value, or analyze the incremental cash flow and risk.

[3] The US Commodity Futures Trading Commission defines a speculator as "a trader who does not hedge, but who trades with the objective of achieving profits through the successful anticipation of price movements" (CFTC Glossary: A guide to the language of the futures industry).

- Any single transaction for a term greater than three years must be approved by the RMC prior to execution.
- Scheduling of loads and resources, along with corresponding bid or offer prices associated with ERCOT Day Ahead Market (DAM), ERCOT Real Time Market (RTM) or ERCOT Supplementary Ancillary Services (SASM) Market are not subject to this Risk Policy or to the limits outlined below and do not require prior RMC approval.

All executed transactions must be recorded and captured in DME's ETRM system of record. Further, all transactions may be conducted on recorded phone lines, electronic trading platforms, or other media that can be recorded and documented. Confirmations of transactions will be compared with the ETRM transaction records by Middle Office, verified and executed by Middle Office personnel. Confirmations for transactions with ERCOT are evidenced through the ERCOT Settlement Summary statement.

The following tables outline the transaction authorization limits established for DME personnel involved with its energy management activity when executing transactions. Those personnel are permitted to execute transactions up to their designated limits or up to the limits of the roles they supervise. They may also execute transactions on behalf of someone having the required authority. Only the Approved Transaction Types listed in Appendix D may be executed unless otherwise approved by the RMC.

B.5.1 Bilateral or Financial Power Transaction Limits

Title	Term	Lead Time	Transaction Size (MW)	Cumulative Volume Limits (MWh)
City Council	No Limit	No Limit	No Max	No limit
City Manager or RMC	≤ 8 Year	≤ 7 Years	300	10,000,000 per 5 Full Calendar Years rolling average
DME General Manager	≤ 7 Year	≤ 5 Years	150	8,000,000 per 5 Full Calendar Years rolling average
Executive Manager Power Supply	≤ 4 Years	≤ 4 Years	100	16,000,000 per 3 Full Calendar Years or 36-month rolling average

EMO Division Manager QSE Manager Trading Optimization Manager Senior Energy Trading Analyst	≤ 24 Month	≤ 24 Months	100	24,000,000 per 36 month rolling average
Energy Market Analyst Senior Energy Market Analyst	≤ 6 Month	≤ 24 Month	50	6,000,000 per month
Senior RT Trader RT Trader	≤ 2 Month	≤ 2 Month	150	1,250,000 per week

Notes:

- Transaction Size Limits represent MW volume per hour.
- Lead time represents the time period from the date a trade is executed to the start of delivery.
- Authorized products include electric power, including both physical and financial derivatives[4], as well as ancillary services. Financial derivatives may be over the counter Electric Power Futures, Heat Rates and Options on Electric Power and CRRs or Exchange Traded Products.
- Authorization for approval of these transactions may be delegated. If transaction authority is delegated downward, volumetric limit applies to approving authority.

B.5.2 Congestion Management Transaction Limits

Title	Auction Type	CRR Auction Period	Approved Instruments	Time Period	Source/Sink Combinations
DME General Manager	Annual & Monthly	Any month or TOU offered by ERCOT (5 years)	CRR	Time of Use	All ERCOT Resource Nodes, all ERCOT Hubs and Load Zones
Executive Manager Power Supply	Annual & Monthly	Any month or TOU block offered by ERCOT (SEQ 6 or less)	CRR	Time of Use	Conventional Resource Nodes, Primary Hub and Load Zone

[4] As used here, a derivative is a contract that derives its value from the performance of an underlying asset or index.

EMO Division Manager Trading Optimization Manager Manager – Analytics and Transmission	Annual & Monthly Daily	Any month or TOU block offered by ERCOT (SEQ 3 or less) N/A	CRR Point to Point Obligations/Options	Time of Use Hourly	Conventional Resource Nodes, Primary Hub and Load Zone
QSE Manager Senior Energy Market Analyst Sr ERCOT Transmission Analyst	Monthly Daily	Any month or TOU block offered by ERCOT (Monthly Auction) N/A	CRR Point to Point Obligations/Options	Time of Use Hourly	Conventional Resource Nodes, Primary Hub and Load Zone
SeniorRT Trader RT Trader	Daily	N/A	Point to Point Obligations/Options	Hourly	Conventional Resource Nodes, Primary Hub and Load Zone

Notes:

- Annual CRR auctions occur monthly for successive 6-month periods (called "sequences" or SEQ) with progressively increasing amounts of transmission capacity available for purchase in each sequence. A copy of the current CRR Activity Calendar which shows key dates associated with each Monthly and Annual CRR auction at http://ercot.com/mktinfo/crr
- Monthly CRR auctions end about 2 weeks before the CRR effective start date
- Conventional Resource Nodes include Denton Energy Center, White Tail & Santa Rita Wind Farms, Blue Bell Solar Farm and resource nodes or ERCOT Hubs associated with fully executed PPAs
- Primary ERCOT Hub is “North Hub”
- Primary ERCOT Load Zone is “Load Zone North”
- The purchase of CRRs for each Source/Sink pair from all ERCOT auctions is limited to the nameplate rating of the generator for City-owned resources or the contract capacity rating for PPAs.

A Congestion Revenue Right (CRR) is a financial instrument that results in a charge or a payment to the owner, when the ERCOT transmission grid is congested in the Day Ahead Market (DAM).

DME uses CRRs as a financial hedge to lock in the price of congestion at the purchase price of the CRR. DME also hedges congestion in ERCOT's Real-Time market by buying CRR-like instruments called Point to Point (PTP) Obligations.

The main purposes of the ERCOT CRR market are to:

- Support a liquid energy market by providing tradable financial instruments for the hedging of transmission congestion charges
- Allow market participants to eliminate or greatly reduce the cost uncertainties resulting from transmission congestion charges
- Encourage competitive energy trading, where the costs of congestion might otherwise be an impediment

DME's primary objective for hedging congestion risk is to mitigate potentially adverse financial consequences from uncertain price differences caused by transmission congestion between the location where it consumes power (ERCOT LZ_North), the locations where it purchases power on a forward basis (EROTT North Hub), and the ERCOT nodes associated with its resources (Denton Energy Center, Blue Summit & Santa Rita Wind farms, Blue Bell and Longdraw solar farms and future renewable resources).

DME is exposed to transmission congestion risk for all amounts of energy forecasted to be consumed in the ERCOT North Load Zone, and energy that could potentially be produced at their respective resource nodes. By default, ERCOT charges all DME load for energy, along with any congestion, in the Real Time Market ("RT"). DME mitigates congestion risk with congestion hedges using Congestion Revenue Rights (CRRs).

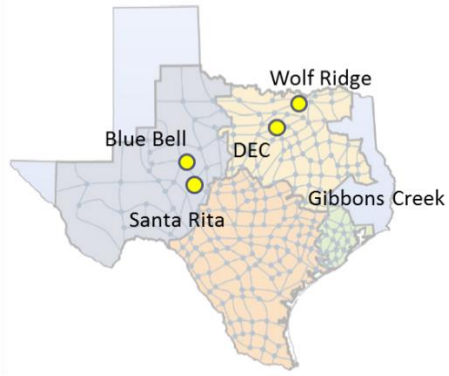


Figure 1

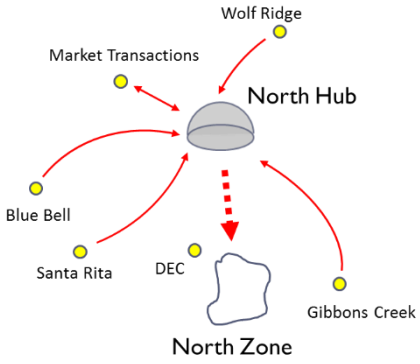


Figure 2

DME hedges congestion risk between each resource and ERCOT's North Hub location, and between North Hub and North Load Zone, by participating in ERCOT's annual and monthly

auctions, layering in CRR purchases for up to 3 years into the future. The North Hub is also used as a delivery point for bilateral trades (for liquidity purposes)

Consistent with DME's approach to hedging energy, DME seeks to acquire CRRs at steadily increasing amounts roughly corresponding to Auction Capacity Percentages, to diversify timing risk, similar to dollar cost averaging, and does not use event-driven trading to time the market, trading in and out of positions. DME employs a tiered approach in ERCOT's annual and monthly auctions[5].

B.5.3 Physical or Financial Natural Gas Transaction Limits

Title	Term	Lead Time	Transaction Size (MMBTU)
City Council	No Limit	No Limit	No Max
City Manager or RMC	≤ 8 Years	≤ 5 Years	246,000,000 per 36 month rolling average
DME General Manager	≤ 7 Years	≤ 5 Years	200,000,000 per 36 month rolling average
Executive Manager Power Supply	≤ 4 Years	≤ 5 Years	150,000,000 per 24 month rolling average
EMO Division Manager QSE Manager Trading Optimization Manager Senior Energy Trading Analyst	≤ 24 Months	≤ 36 Months	50,000,000 per 3 month rolling average
Energy Market Analyst Senior Energy Market Analyst	≤ 6 Months	≤ 24 Months	2,000,000 per month
Senior RT Trader RT Trader	≤ 2 Month	≤ 2 Months	N/A

Notes:

- Natural Gas transactions limited to the following locations: Henry hub or locations within Texas which are physically or financially correlated to DME energy costs

- Authorized products include natural gas, including both physical and financial derivatives. Financial derivatives may be over the counter Gas Futures and Options or Exchange Traded Products

B.5.4 Renewable Energy Credit ("REC") Transaction Limits

	Per Transaction Limits (up to)		
Title	Vintage	Volume	$/REC
City Council	No Limit	No Limit	No Max
City Manager	≤ 5 Years	9,500,000	No Max
DME General Manager	≤ 3 Year	5,750,000	No Max
Executive Manager Power Supply	≤ 3 Years	5,750,000	No Max
EMO Division Manager QSE Manager Trading Optimization Manager	≤ 2 Years	3,750,000	No Max

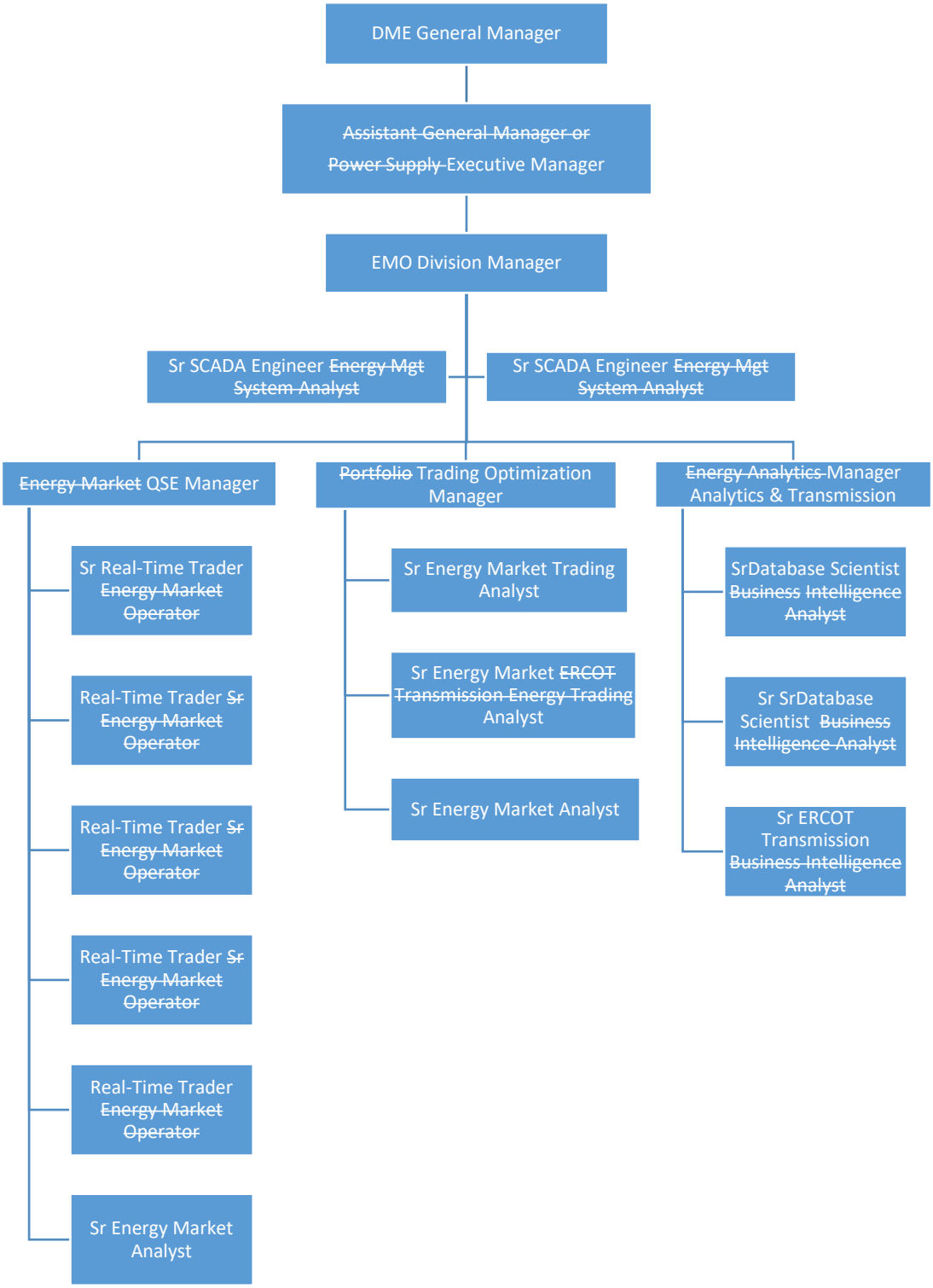
B.5.5 Ancillary Services Transaction Limits

Title	Term	Lead Time	Transaction Size (MW)	Cumulative Volume Limits (MWh)
City Council	No Limit	No Limit	No Max	No limit
City Manager or RMC	≤ 8 Year	≤ 7 Years	150	5,000,000 per 5 Full Calendar Years rolling average
DME General Manager	≤ 7 Year	≤ 5 Years	75	4,000,000 per 5 Full Calendar Years rolling average
Executive Manager Power Supply	≤ 4 Years	≤ 4 Years	50	8,000,000 per 3 Full Calendar Years or 36-month rolling average
EMO Division Manager QSE Manager Trading Optimization Manager	≤ 24 Month	≤ 36 Months	25	4,000,000 per 36 month rolling average

Sr Energy Trading Analyst				
Energy Market Analyst Senior Energy Market Analyst	≤ 4 Month	≤ 24 Month	10	50,000 per month
Senior RT Trader RT Trader	≤ 2 Month	≤ 2 Month	150	25,000 per week

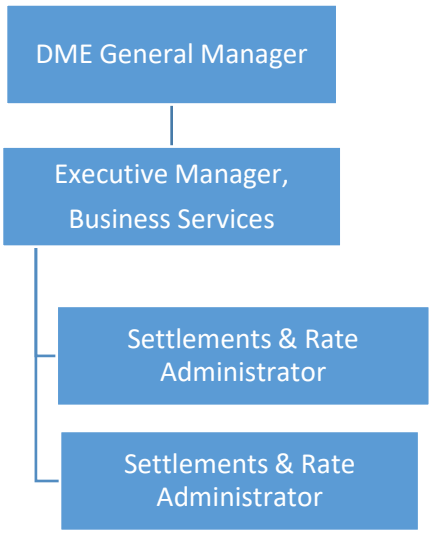
Appendix C ORGANIZATIONAL STRUCTURE

Energy Management Organization Front Office



Energy Management Organization Middle Office

Energy Management Organization Back Office



Appendix D APPROVED TRANSACTION TYPES

Products allowed for energy management activities include the purchase and sale of electric energy, ancillary services, natural gas and ERCOT Congestion Revenue Rights/Point to Point Obligations. The purchase and sale of Renewable Energy Credits are also allowed as needed to meet Denton Renewable Energy Plan goals. The City Council is responsible for authorizing all products and commodity types through this Policy.

All transactions must follow certain requirements as described throughout this Policy. Key elements include:

- All transactions must be executed to by authorized transacting personnel
- All transactions must be with approved counterparties and/or commodity exchanges
- All transactions must be with counterparties with adequate available credit or fully collateralized
- All transactions must be committed over recorded phone lines or via recordable electronic communications
- All transactions must be approved transaction types
- All transactions must be consistent with this Policy and the EMO Procedures Manual

Failure to observe the above minimum requirements when executing energy transaction is a violation of Policy and is subject to disciplinary action.

AUTHORIZED MARKETS

DME may only execute transactions to buy or sell energy-related products after some type of enabling agreement has been signed with a counterparty or commodity exchange. In approving this Policy, the City Council has authorized the City Manager, or their designee, to sign such agreements.

Examples of markets where DME is currently authorized to transact include:

- Intercontinental Exchange (ICE)
    - ERCOT Physical and Financial Power
    - Natural Gas futures

- Bilateral markets with approved counterparties
    - Physical Natural Gas at locations within Texas and Oklahoma to support fuel purchases for the Denton Energy Center and DME's energy portfolio
    - Physical and Financial Power
- ERCOT
    - Day Ahead Market
    - Real Time Market
    - Ancillary Services Market
    - Congestion Management Auctions and Markets

AUTHORIZED POWER TRANSACTIONS

Power transactions shall be limited to delivery or exposure to power within ERCOT. Before executing any of the following hedges FOR THE FIRST TIME, DME will provide notification to the Risk Committee, along with an explanation of the risks and benefits of expanding our use of hedging instruments.

1. Physical
    a. Fixed-price & Index-price purchases and sales to third parties or between internal DME risk books.
    b. Call & Put Options (e.g., fixed & indexed, hourly, Time of Use, daily monthly, annually)
    c. Ancillary services

2. Financial
    a. Fixed-price & Index-price purchases and sales
    b. Exchange traded, bilateral or OTC Call or Put options[6]
    c. Ancillary Services
    d. ERCOT Congestion Revenue Rights (CRRs), Point to Point Obligations (PTPs) and other similar congestion management transactions.

AUTHORIZED NATURAL GAS TRANSACTIONS

Natural Gas transactions shall be limited to Henry Hub or a location within Texas or Oklahoma to support commodity exposure for DME's energy portfolio. Before executing any of the

[6] For example, fixed & indexed, hourly, Time of Use, daily monthly, annual options

following hedges FOR THE FIRST TIME, DME will provide notification to the Risk Committee, along with an explanation of the risks and benefits of expanding our use of hedging instruments.

1. Physical Gas which may be needed to support operation of the Denton Energy Center
    a. Fixed and index price Natural Gas commodity
    b. Fixed and index price Natural Gas transportation
    c. Fixed and index price Natural Gas storage
2. Financial
    a. Exchange traded, bilateral or cleared futures and Exchange or OTC swaps
    b. Exchange traded, bilateral or cleared and or OTC Call or Put options[7]
    c. Index options

OTHER AUTHORIZED ENERGY-RELATED COMMODITY TRANSACTIONS

1. Tolling agreements[8] for use as a vehicle for executing the physical power and gas options mentioned above. They shall be structured as financially settled transactions using the Day-Ahead and real-time ERCOT settlement price.
2. Structured transactions[9]

3. Physical Renewable Energy Credits (RECs) including two prior vintage years and all forward years up to the tenor of vintage limits set in the table under section B.5.4 above.

4. Energy broker agreements - contracts used with energy brokers, who act as intermediaries connecting DME with energy suppliers who have existing master enabling agreements with DME to buy or sell energy or RECs . These agreements outline the services the broker will provide as well as the associated fees and obligations.

[7] Ibid.
[8] Tolling agreements are contracts where DME would essentially "rent" a power generation facility from its owner, paying a set fee to utilize the facility to convert fuel into electricity while retaining control over the operation and dispatch of the power generated.
[9] Structured contracts go beyond standard market contracts like futures and swaps and are tailored to address the specific risk profiles of the buyer and seller. They typically involve transactions where the quantity, duration or time periods do not line up with transactions regularly traded in over the counter markets or on commodity exchanges.

Appendix E FORWARD HEDGING STRATEGIES AND PLANS

Successful management of the price and volumetric risks faced by DME requires analysis, monitoring, and communication. Analysis of published weather forecasts and market price data serve as key inputs to models used for planning and ensures that the appropriate data is converted into useful information. Consistent with market risk policies defined herein and the risk limits defined in Appendix A, DME, in concert with the RMC, develops annual hedging strategies with underlying hedging plans as a means to manage the volumetric and price risks faced by the utility. A review of the status of current hedging plans will typically be a topic of discussion at RMC meetings.

Upon substantial edits, DME shall submit a confidential updated Hedging Strategy to the RMC for managing the key components of its energy portfolio (load, renewables, congestion risk and the DEC) for the upcoming three (3) full calendar years. Due to the complexity of the wholesale energy markets and the energy regulatory environment, the Hedging Strategy may require several iterations to the Hedging during each year due to market conditions. The RMC shall provide an update of its current Hedging Strategy to the PUB and Council as soon as practical after it has been approved. The Hedge Plan is a confidential strategy document and, if requested, will be presented to the PUB and City Council in closed session.

Each Hedging Plan will:

- Cover a clearly specified forward time period.
- Explain the justification for the hedge (a general description of the resource mix and load that contribute to the open position for the specified time period, along with the Open Position tolerances for the specified forward time period).
- Define a volumetric limit for hedge purchases and sales.
- Document transaction types expected to be used to carry out the Hedging Plan.
- Proposed price triggers that will enable hedging activity within the Hedging Plan's limits.

DME may, at any time, request that the RMC consider changes to the current Hedging Strategy or to an individual Hedging Plan. Any approved changes to the Hedging Strategy or Hedging Plan shall be recorded in the RMC meeting minutes and an updated written Hedging Strategy or Hedging Plan document will be prepared as soon as practical incorporating such changes. All hedge strategy documents shall be confidential and not subject to the open record requirements due to the proprietary and commercial sensitivity of the plans. If it becomes apparent to DME management that additional transactions to reshape expected monthly forward positions are necessary given changes in generation forecasts, market conditions, and load forecasts, the DME General Manager may direct EMO staff to enter into

and execute such transactions to rebalance the forward position. These transactions will be discussed in RMC meetings ahead of time if conditions allow or reported after the fact and documented in the minutes of the next RMC meeting. Changes to the Hedge Plan outside the annual review and approval of the Energy Risk Policy does not require approval of the PUB and City Council. However, all transactions undertaken will still comply with the authority limits contained in this Energy Risk Policy.

Appendix F 2024 -2025 DME HEDGE PLAN

Hedge Plan Overview

The management of price and volume risk associated with the obligation to provide reliable, economically priced wholesale electric energy to the customers of Denton Municipal Energy ("DME") is one of the main responsibilities of DME. This responsibility is both a short term and long-term activity. Understanding the potential risks and their impacts along with executing hedging transactions (trades) that reduce or eliminate price risk while providing stable and predictable wholesale energy costs is the objective of the Hedge Plan.

The Hedge plan is a high-level summary and a tactical plan for managing the risks associated with the provision of energy and ancillary services required to meet the demands of the City of Denton, its residents and its businesses. Because the Hedge Plan lays out the specific risks and the plans to manage those risks into the future, it is a confidential document containing market sensitive information and is protected pursuant to Texas Government Code Section 551.086. The Hedge plan is however a component of the DME Risk Policy, and this summary is included to describe the purpose and methods that will be utilized by the EMO to remove risk from the power supply portfolio.

The Hedge Plan does not provide a comprehensive description of the day-to-day activities of the EMO, but rather provides a description of the risk reduction transactions that will be authorized for the EMO to execute. The intra-day optimization of positions for the benefit of customers and the required scheduling and interaction with ERCOT in its role as the transmission reliability entity of Texas will continue to be the primary focus of the EMO.

The uncertainty of load and renewable energy generation at any specific point in time coupled with the changing price for power at each delivery point (generation and load) every five minutes and the variability of natural gas price for the DEC make a single algorithm to determine hedge actions impossible. Consequently, DME will seek to de-risk the supply and demand component of its positions by looking at each position independently. Maximizing value and minimizing price risk to customers for each position is manageable and quantifiable and as such the Hedge Plan will be executed on a position-by-position basis. The main positions include Load; Renewable Energy Generation and associated basis or congestion positions; and the Denton Energy Center Position.

This Hedge Plan sets forth the types of risk-reducing transactions that are recommended, along with the execution and optimization strategies that will be employed by DME through the EMO department. All recommendations are based upon the risk positions that DME owns and their relative risk is the current forward markets. Forward markets change daily and on an intraday

basis and the Hedge Plan is intended to permit sufficient flexibility to the EMO personnel, consistent with the Risk Management Policy, to react to these market changes. However, the Hedge Plan sets specific targeted volumes for hedging each position by certain dates and with an objective for each set of trades entered into to reduce risk. The DME middle office will monitor compliance with the mandated activities in the Hedge Plan and will report on the compliance status on a daily basis to the front office and DME management. Any violations of limits or requirements in the Hedge plan and Risk Policy will be reported to the Risk Committee along with any recommended mitigation and disciplinary action if required.

Appendix G NEW PRODUCT/MARKET INSTRUMENT APPROVAL CHECKLIST

Checklist Items	Primary Accountability
Benefits	
Identify and describe the benefits of using the new product	Front Office
Risk	
Understand and document the payoff profile of the new product	Front Office
Identify and analyze credit risk of new product	Middle Office
Develop methodology for measuring credit risk of new product (mark-to-market, potential exposure, stress exposure.	Middle Office
Identify prospective counterparties for new product/instrument and determine credit suitability.	Front Office & Middle Office
Approve new product valuation methodology.	Middle Office
Determine if staff, systems, and management skill sets are sufficient for valuing and transacting new product.	Middle Office
Determine physical disposal or financial settlement requirements.	Front Office & Back Office
Determine stress test requirements for new product.	Middle Office
Define how stress testing must be performed (frequency, scope, independent source).	Middle Office
Financial	
Define the capital requirements (exchange margin or collateral) of the new product.	Front Office & Middle Office
Determine contract documentation required.	Front Office & Middle Office
Accounting, Tax, and Regulations	
Identify applicable U.S. and local regulatory restrictions for new product.	Back Office/City Finance
Determine regulatory compliance requirements, if any, for new product.	Middle Office & Back Office/City Finance

Review accounting policies and approve proposed treatment.	Back Office/City Finance
Determine audit requirements.	Back Office/City Finance
Consider tax consequences of new product.	Back Office/City Finance
Policy	
Verify counterparty authority to enter into contract for new product.	Middle Office
Develop and implement monitoring and review procedures to ensure Policy compliance.	Middle Office
Define procedures and responsibilities for independent verification of positions and market valuation inputs (prices, and volatilities if applicable).	Middle Office
Determine impact on position/risk limits/hedge targets	Middle Office
Determine and define procedures for confirmation and reconciliation of new product.	Middle Office
Verify that all groups involved in new product transaction procedures can handle anticipated transaction volume.	Middle Office
Determine and define management reporting requirements.	Middle Office

Appendix H ENERGY RISK MANAGEMENT POLICY ACKNOWLEDGEMENT FORM

The purpose of this form is to confirm that City of Denton employees involved with the Energy Portfolio Management program have received, read, and understand DME's Energy Risk Management Policy and appendices, and the City of Denton policies regarding employee conduct.

Employee Name: _____

Title: _____

Department: _____

Supervisor: _____

My signature below confirms that I have received, read and understand DME's Energy Risk Management Policy and appendices, and the City of Denton policies regarding employee conduct. I understand that my violation of the Risk Policy may result in disciplinary action that may include termination of my employment with the City of Denton.

_____
Signature of Employee

_____
Date

CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES
February 9, 2026

After determining that a quorum was present of the Public Utilities Board of the City of Denton, convened in a Regular Meeting on Monday, February 9, 2026, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Chair Devin Taylor, Lee Riback, Aaron Newquist, Thomas Plock, Robert Rayner, Billy Cheek

Also present: General Manager Antonio Puente, Jr. and First Assistant City Attorney Marcella Lunn

Absent: Susan Parker

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

There were no presentations from the public.

2. CONSENT AGENDA

The Consent Agenda consisted of Items 2 A-G.

Board member Taylor pulled Item F for individual consideration.

Board Member Rayner moved to recommend adoption of agenda items 2 A-E, G. Motion seconded by Board Member Newquist; motion carried.
YES (6): Devin Taylor, Lee Riback, Aaron Newquist, Thomas Plock, Robert Rayner, Billy Cheek
NO (0):

A. PUB26-002 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract extension between the City of Denton and WSP USA Inc., for program management services for the Denton Municipal Electric Capital Improvement Plan projects; and declaring an effective date (RFQ 6862 - extending a contract with WSP USA Inc., until project completion).

B. PUB26-003 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract extension between the City of Denton and CJA Enterprises LLP through January 25, 2027, to continue the purchase of construction materials for the City of Denton Streets, Water, Wastewater, and various other departments; and declaring an effective date (IFB 7841 -extending a contract with CJA Enterprises LLP, to January 25, 2027).

C. PUB26-004 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional

Services Agreement with Freese and Nichols, Inc., for planning services for the Water Utilities Financial Planning and Support Project for the Water Utilities Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8213-012 - Professional Services Agreement for planning services awarded to Freese and Nichols, Inc., in the not-to-exceed amount of $1,049,620.00).

D. PUB26-005 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive proposals under IFB 8903 for Exchanger Replacement for the Pecan Creek Water Reclamation Plant for the Water Utilities Department; and providing an effective date (IFB 8903).

E. PUB26-006 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Gage & Cade Construction, LLC, for the Public Disposal Facility Repairs for the Solid Waste and Recycling Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8915 - awarded to Gage & Cade Construction, LLC, in the not-to-exceed amount of $579,952.00).

F. PUB26-007 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with AMS Group LLC, for power transformer disposal (scrap) services for Denton Municipal Electric; providing for the sale of obsolete assets; and providing an effective date (IFB 8971 - awarded to AMS Group LLC, in the revenue amount of $401,777.00).

Chris Lutrick answered questions from Board members.

Board Member Taylor moved to recommend adoption of agenda items 2 F. Motion seconded by Board Member Cheek; motion carried.
YES (6): Devin Taylor, Lee Riback, Aaron Newquist, Thomas Plock, Robert Rayner, Billy Cheek
NO (0):

G. PUB26-008 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a Construction Manager at Risk Preconstruction Agreement between the City of Denton and Archer Western Construction, LLC, amending the contract approved by City Council on September 30, 2025, in the not-to-exceed amount of $1,500,000.00; said first amendment to acquire and assemble the equipment for the required pilot study for the Ray Roberts Water Treatment Plant Expansion Project; providing for the expenditure of funds therefor; and providing an effective date (RFP 8590 - providing for an additional first amendment expenditure amount not-to-exceed $1,315,293.00, with the total contract amount not-to-exceed $2,815,293.00).

3. ITEMS FOR INDIVIDUAL CONSIDERATION

A. PUB25-224 Consider approval of the January 12, 2026 minutes.

Board Member Cheek moved to recommend adoption of agenda items 3 B. Motion seconded by Board Member Riback; motion carried.
YES (6): Devin Taylor, Lee Riback, Aaron Newquist, Thomas Plock, Robert Rayner, Billy Cheek
NO (0):

B. PUB26-251 Management Reports

1. Incident Summary- Fire at Pecan Creek Water Reclamation Facility
2. PUB Memo for Robson West Lift Station and Force Main
3. Retroactive Memo for February 9, 2026 PUB
4. Future Agenda Items
5. New Business Action Items

Board member Riback requested updates on Major Water and Wastewater infrastructure projects such as Ray Roberts Expansion, Pecan Creek Expansion and any others the department may deem responsive to this request.

Board member Cheek requested updates on Hickory Road Improvements as they relate to Water and/or Wastewater infrastructure.

WORK SESSION

A. PUB26-001 Receive a report and hold a discussion regarding updates to the Cross Connection Control and Backflow Ordinance.

Michael Hunter gave a presentation and answered questions from Board members. Stephen Gay also answered questions from Board members.

4. CONCLUDING ITEMS

With no further business, the meeting was adjourned at 9:31 AM.

DEVIN TAYLOR	**MONICA SALCEDO**
CHAIR	**ADMIN ASST**
CITY OF DENTON, TEXAS	**CITY OF DENTON, TEXAS**

Minutes approved on: 1/26/26

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: February 23, 2026

SUBJECT

Consider recommending adoption of 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).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

The Pecan Creek Water Reclamation Plant (PCWRP) is currently in design for an expansion that will increase the facility's treatment capacity to 30 million gallons per day. The project includes construction of a new headworks structure, membrane bioreactor filtration, solids handling, ultraviolet disinfection, and a control/operations building. To deliver the work efficiently, the City is using a Construction Manager at Risk (CMAR) approach, with construction divided into multiple bid packages. Guaranteed Maximum Price No. 1 (GMP #1) is the first of these packages.

GMP #1 encompasses foundational and early-phase construction activities, including testing and inspections, site surveying, earthwork, site utilities, package allowances, and the CMAR's general conditions for the duration of the project. These components establish the groundwork necessary for subsequent bid packages and overall project sequencing.

Sundt Construction serves as the CMAR and will manage subcontractors, maintain the project schedule, and deliver all bid packages throughout construction. During the preconstruction phase, Sundt developed a cost model and competitively bid the work based on the 90 percent design documents to prepare the GMP #1 proposal. Within the GMP deliverable, Sundt also provided a construction management plan, a quality control plan, and a proposed sequencing schedule for the project. These items are a product of the collaboration of the City, CMAR, and the design engineer.

The City selected Sundt Construction through a one-step CMAR procurement process and awarded a preconstruction services agreement in the amount of $2,452,441. The agreement was later amended to add

design-phase services and extend the project timeline for an additional not-to-exceed amount of $296,273, bringing the total preconstruction contract to $2,748,714.

The Pecan Creek Water Reclamation Plant Expansion Construction Project has a total estimated cost of $92,321,565. This estimate includes a $89,261,424 total base bid amount and a contingency of $3,060,141. A contingency allowance, if any, is for the sole use of the City and will be subject to written authorization by the City's Project Manager and Program Manager.

The Utility Extendable Commercial Paper program is being used as an appropriation authority for this contract.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On February 6, 2024, City Council approved a Construction Manager at Risk (CMAR) pre-construction phase contract with Sundt Construction, Inc., in the not-to-exceed amount of $2,452,441 (Ordinance 24-156).

On August 5, 2025, City Council approved Amendment No. 1 to a Construction Manager at Risk (CMAR) pre-construction phase contract with Sundt Construction, Inc., in the not-to-exceed amount of $296,273 (Ordinance 25-1344).

RECOMMENDATION

Award a Construction Manager at Risk contract with Sundt Construction, Inc., for construction phase services for Pecan Creek Water Reclamation Plant Expansion for the Water Utilities Department, in a not-to-exceed amount of $92,321,565.

PRINCIPAL PLACE OF BUSINESS

Sundt Construction, Inc.
Irving, TX

SUSTAINABILITY MEASURES

The contract will help the City of Denton with the construction services necessary to permit the Pecan Creek Water Reclamation Plant construction. The new infrastructure will increase the city's wastewater cleaning capacity. The facilities are essential to safely treating and discharging effluent to the sensitive, accepting streams.

ESTIMATED SCHEDULE OF PROJECT

Construction for the Pecan Creek Water Reclamation Plant Expansion will begin in April 2026, with a projected completion date of Q4 2031.

FISCAL INFORMATION

The Utility Extendable Commercial Paper program is being used as an appropriation authority for this contract. This project will be funded from Wastewater Utilities account 640496545.1360.40100. Requisition # 174368 has been entered into the Purchasing software system for $56,113,229. The remaining $36,208,336 of the total GMP 1 amount of $92,321,565 will be budgeted in the next fiscal year to align with the construction spend through the Wastewater Capital Improvement Program.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Original Ordinance, Pre-Construction Contract, and Amendment 1
Exhibit 3: Presentation
Exhibit 4: Ordinance and Construction Services Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: David Brown, 940-349-8030.

Legal point of contact: Leah Bush at 940-349-8333.

ORDINANCE NO. 24-156

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 PRE-CONSTRUCTION SERVICES OF 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., IN THE NOT-TO-EXCEED AMOUNT OF $2,452,441.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for pre-construction services of 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.

RFP NUMBER	CONTRACTOR	AMOUNT
8289	Sundt Construction, Inc.	$2,452,441.00

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 Brian Beck and seconded by Vicki Byrd. This ordinance was passed and approved by the following vote [7 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	✓			
Vicki Byrd, District 1:	✓			
Brian Beck, District 2:	✓			
Paul Meltzer, District 3:	✓			
Joe Holland, District 4:	✓			
Brandon Chase McGee, At Large Place 5:	✓			
Chris Watts, At Large Place 6:	✓			

PASSED AND APPROVED this the 6th day of February, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

Digitally signed by Marcella Lunn
DN: dc=com, dc=cityofdenton, dc=codad, ou=Department Users and Groups, ou=General Government, ou=Legal, cn=Marcella Lunn, email=Marcella.Lunn@cityofdenton.com
Date: 2024.01.05 10:17:20 -06'00'

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Docusign City Council Transmittal Coversheet

FILE	8289
File Name	CMAR PCWRP Headworks and Expansion Project
Purchasing Contact	Erica Garcia
City Council Target Date	FEBRUARY 6, 2024
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	24-156

DS
LH

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CITY OF DENTON, TEXAS

CONSTRUCTION MANAGER AT RISK FOR PCWRP Headworks and Expansion Project

CONSTRUCTION MANAGER AT RISK
DESIGN PHASE SERVICES

CONTRACT NO. 8289

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CONSTRUCTION MANAGER AT RISK FOR PCWRP HEADWORKS AND EXPANSION PROJECT
CONSTRUCTION MANAGER AT RISK DESIGN PHASE SERVICES
CONTRACT NO. 8289

THIS CONTRACT, made and entered into this by and between City of Denton, Texas, 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 professional services and construction services.
B. The City intends to construct PCWRP Headworks and Expansion Project as described in Exhibit A attached, hereinafter referred to as the "Project".
C. To undertake the design of said Project the City has entered into a contract with Kimley Horn . hereinafter referred to as the "Design Professional."
D. The CM@Risk has represented to the City the ability to provide design phase services and to construct the Project.
E. Based on this representation, the City intends to enter into a contract with the CM@Risk for the design phase services identified in this contract. At the end of the design phase, at the City's discretion, the City may enter into a separate construction contract with the CM@Risk for construction phase services.

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 – TERMS AND DEFINITIONS

Addenda - Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

Agreement (Contract) – This written document signed by the City and CM@Risk covering the design phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.

Change Order (Amendment) - A written instrument issued after execution of the Contract Documents signed by the City and CM@Risk, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other contract terms.

City (Owner) - 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 Development Services, Fire and Planning Departments or any other City department are not subject to the responsibilities of the City under this Agreement.

City's Designated Project Manager – The City of Denton representative who is designated as project manager for the Project.

Construction Contract Time(s) - The number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion of the Work.

Construction Documents – The plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

Construction Fee – The CM@Risk's administrative costs, home office overhead, and profit, whether at the CM@Risk's principal or branch offices.

Construction Manager at Risk (CM@Risk) - The firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract.

Construction Management Plan – Formal documentation prepared and maintained by the CM@Risk describing the sequence and duration of the activities to accomplish the Work within the Contract Time including but not limited to those items set forth in Section 2.2.

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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. The amount of the CM@Risk's Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM@Risk's Contingency is described in Section 2.6.

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. The amount of the Owner's Contingency will be set by the City and will be in addition to the project costs included in the CM@Risk's GMP packages. Use and management of the Owner's Contingency is described in Section 2.6.

Contract Amount - The cost for services for this Contract as identified in Article 4.

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.

Contract Time(s) - The number of days or the dates stated in this Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

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, building permit fees (if not paid for by City), materials testing, General Conditions Costs, and related items. The Cost of the Work shall not include the CM@Risk's Construction Fee.

Critical Path Schedule - 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 - Calendar day unless otherwise specifically noted in the Contract Documents.

Deliverables – The work products prepared by the CM@Risk in performing the scope of work described in this Contract. Some of the major deliverables to be prepared and provided by the CM@Risk during the design phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Statement of Proposed MBE/WBE Utilization, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

Design Professional - The qualified, licensed person, firm or corporation who furnishes design and/or construction administration services required for the Project.

Drawings (Plans) – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM@Risk during the construction phase and which have been prepared or approved by the Design Professional and the City. Includes Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, construction documents), but *"not for construction"*. Shop Drawings are not Drawings as so defined.

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

Float - 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, but is not limited to the following types of costs for the CM@Risk during the construction phase: payroll costs for project manager or construction manager for Work conducted at the site; payroll costs for the superintendent and full-time general foremen; payroll costs for other management personnel resident and working on the site; workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); administrative office personnel; costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses; utilities, fuel, sanitary facilities and telephone services at the site; costs of liability insurance premiums not included in labor burdens for direct labor costs; costs of bond premiums; costs of consultants not in the direct employ of the CM@Risk or Subcontractors; and fees for licenses. The General Conditions Costs shall be included in the Cost of the Work.

Guaranteed Maximum Price (GMP) – The sum of the maximum Cost of the Work, the CM@Risk's Construction Fee, and CM@Risk Contingency.

GMP Plans and Specifications – The plans and specifications provided pursuant to paragraph 2.6.5 upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the CM@Risk submitted on the prescribed form setting

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forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Contract.

Laws and Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

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 of Intent to Award—The written notice by City to a respondent to the City's solicitation of the Project of City's intent to accept a certain respondent's proposal.

Notice to Proceed (NTP) Letter - A written notice given by City to the CM@Risk fixing the date on which the CM@Risk will start to perform the CM@Risk's obligations under this Contract.

Payment Request - The form that is accepted by the City and used by the CM@Risk in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and or the City.

Project - The works to be completed in the execution of this Contract as described in the Recitals above and Exhibit A attached.

Project Budget - The amounted budgeted by the City for the Project and the Work.

Project Schedule - 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 Team – Design phase services team consisting of the Design Professional, CM@Risk, City's Project Manager, City's Client Department representatives and other stakeholders who are responsible for making decisions regarding the Project.

Schedule of Values (SOV) – Document specified in the construction phase Contract, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Project Schedule depending on if the Project Schedule is cost-loaded or not.

Shop Drawings - All drawings, diagrams, schedules, and other data specifically prepared for the Work by the CM@Risk or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

Site – The land or premises on which the Project is located.

Specifications - 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.

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

Subcontractor - An individual or firm having a direct contract with the CM@Risk or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@Risk is responsible. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.7 of this Contract.

Substantial Completion - 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) approval by City Fire Marshall and local authorities, unless such approval is not granted for reasons beyond CM@Risk's responsibility or control; (ii) all systems in place, functional, and displayed to the City or its representative; (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. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed Letter pursuant to the Construction Phase contract.

Supplier - A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CM@Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

Work - The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor, services 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.

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ARTICLE 2 – BASIC DESIGN PHASE SERVICES

2.1 GENERAL

2.1.1 The CM@Risk, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the satisfaction of the City's Designated Project Manager, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Denton, Texas would exercise at such time, under similar conditions. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services being provided under this Contract will not alter any real property owned by the City.

2.1.2 Program Evaluation: As a participating member of the Project Team, the CM@Risk will provide to the City and Design Professional a written evaluation of the Project and Project Budget, with recommendations as to the appropriateness of each.

2.1.3 Project Meetings: The CM@Risk will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.

2.1.4 The CM@Risk will provide design phase services described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@Risk will promptly notify the City in writing whenever the CM@Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.

2.1.5 The CM@Risk, when requested by the City, will attend, make presentations, and participate as may be appropriate in public agency and or community meetings, germane to the Project. The CM@Risk will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN

2.2.1 The CM@Risk will prepare a Construction Management Plan (CMP), which may include the CM@Risk's professional opinions concerning: (a) Project Milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast- tracking and/or phasing the construction, (d) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.

2.2.2 The CM@Risk may add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional, or the CM@Risk, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast- tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the City.

2.3 PROJECT SCHEDULE

2.3.1 The fundamental purpose of the "Project Schedule" is to identify, coordinate, and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@Risk will, however, develop and maintain the "Project Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the City. The CM@Risk will use scheduling software to develop the Project Schedule that is acceptable to the City. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined.

2.3.2. 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.

2.3.2.1 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

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graphical format for the Project as a whole.

2.3.2.2 The CPM diagram schedule shall indicate all relationships between activities.

2.3.2.3 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.

2.3.2.4 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.

2.3.2.5 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.

2.3.2.6 The schedule shall show Milestones, including Milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the CM@Risk activities.

2.3.2.7 The 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.

2.3.3 The Project Schedule shall consider the City's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.

2.3.4 Float time shall be as prescribed below:

2.3.4.1 The total Float within the overall 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 completion date.

2.3.4.2 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 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.

2.3.4.3 Since Float time within the 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.

2.3.5 The Project Schedule will be updated and maintained by the CM@Risk throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CM@Risk's plan for the performance of the construction phase Work. The CM@Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CM@Risk will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

2.3.6 Project Phasing: If phased construction is deemed appropriate and the City and Design Professional approve, the CM@Risk will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM@Risk will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

2.4.1 The CM@Risk will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.

2.4.2 The CM@Risk will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CM@Risk to construct the Project. Before initiating construction operations, the CM@Risk may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.

2.4.3 The CM@Risk will meet with the Project Team as required to review designs during their development. The CM@Risk will familiarize itself with the evolving documents through the various design phases. The CM@Risk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility

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and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The CM@Risk will furthermore maintain a project decision and trend log as design develops and advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as concerns that exist with respect to coordination of the Drawings and Specifications. The CM@Risk will recommend cost effective alternatives.

2.4.4 The CM@Risk will routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.

2.4.4.1 Constructability Reviews: The CM@Risk will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration efficiency issues concerning access and entrance to the site, laydown, and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.

2.4.4.2 Bidability Reviews: The CM@Risk will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.

2.4.4.3 The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications, and other documents. If requested by the City, the CM@Risk will meet with the City and Design Professional to discuss any findings and review reports.

2.4.4.4 The CM@Risk's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM@Risk.

2.4.5 Notification of Variance or Deficiency: It is the CM@Risk's responsibility to assist the Design Professional in ascertaining that, in the CM@Risk's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM@Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.

2.4.6 Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CM@Risk in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM@Risk will include the cost of the alternatives into the cost estimate and any GMP Proposals.

2.5 COST ESTIMATES

2.5.1 Unless otherwise agreed by both parties, within 14 Days after receipt of the documents for the various phases of design, the CM@Risk shall provide a complete and detailed cost estimate and a written review of the documents. The cost estimate should include all cost categories except Owner's Contingency included in the GMP Proposal identified in Exhibit C attached. The Design Professional and CM@Risk shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the City will make the final determination.

2.5.2 If any estimate submitted to the City exceeds previously accepted estimates or the City's Project Budget, the CM@Risk shall make appropriate recommendations on methods and materials to the City and Design Professional that he believes will bring the project back into the Project Budget.

2.5.3 In between these Milestone estimates, the CM@Risk shall periodically provide a tracking report which identifies the upward or downward movements of costs due to design development, value engineering or scope changes. It shall be the responsibility of the CM@Risk to keep the City and Design Professional informed as to the major trend changes in costs relative to the City's budget.

2.5.4 If requested by the City, the CM@Risk shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

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2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

2.6.1.1 The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City (see Exhibit C attached). CM@Risk must verify with the City the current Exhibit C requirements and procedures when entering into these services.

2.6.1.2 The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by the CM@Risk will be based on and consistent with the current update/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.

2.6.2 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.

2.6.2.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.

2.6.2.2 The General Conditions Costs are a firm fixed lump sum amount included as a Cost of the Work and that will include bonds and insurance premiums based on the full contract price for construction.

2.6.2.3 The Construction Fee is 7 % of the Cost of the Work.

2.6.2.4 CM@Risk's Contingency is an amount the CM@Risk may use 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 receive all markups at the time of GMP submission.

2.6.2.5 Taxes are deemed to include all sales, use, consumer, and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are included as a Cost of the Work.

2.6.3 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 full 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.

2.6.4 GMPs are cumulative 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.

2.6.5 The CM@Risk will prepare its GMP in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM@Risk shall provide a list of drawings and specifications upon which its proposed GMP is based. These documents will be identified as the GMP Plans and Specifications.

2.6.6 An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications. Any such Project Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.

2.6.7 GMP savings resulting from a lower actual project cost than anticipated by the CM@Risk remaining at the end of the project will revert to City.

2.6.7.1 GMP Proposal(s) Review and Approval

2.6.7.2 The CM@Risk will meet with the City and Design Professional to review the GMP Proposal(s) and the written statement of its basis. As part of the statement of basis, the CM@Risk shall identify and justify any costs that are significantly different than the latest cost estimate provided by the CM@Risk. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CM@Risk will make adjustments as necessary to the GMP Proposal, its basis or both.

2.6.7.3 The City upon receipt of any GMP proposal from the CM@Risk, may submit the GMP Plans and Specifications to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals.

2.6.7.4 If the CM@Risk GMP Proposal is greater than the independent third party or Design Professional's estimate, the City may require the CM@Risk to reconfirm its GMP Proposal. The CM@Risk will accept the independent third party's or Design Professional's estimate for the Cost of Work as part of his GMP or present a report within seven days of a written request to the City identifying, explaining, and substantiating the differences. The CM@Risk may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the City. At that time, the City may do one of the following.

(a) Accept the CM@Risk original or revised GMP Proposal, if within the City's budget, without comment.

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(b) Accept the CM@Risk original or revised GMP Proposal that exceeds the City's budget and indicate in writing to the CM@Risk that the Project Budget has been increased to fund the differences.

(c) Reject the CM@Risk's original or revised GMP Proposal because it exceeds the City's budget, the independent third parties or Design Professional's estimate, in which event, the City may terminate this Contract and/or elect to not enter into a separate contract with the CM@Risk for the construction phase associated with the scope of Work reflected in the GMP Proposal.

2.6.7.5 If during the review and negotiation of GMP Proposals design changes are required, the City will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CM@Risk. The CM@Risk will promptly notify the Design Professional and City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

2.7 MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

2.7.1 The selection of major Subcontractors and major Suppliers may occur prior to submission of a GMP Proposal. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of the CM@Risk. In any case, the CM@Risk is solely responsible for the performance of the selected Subcontractors/Suppliers.

2.7.1.1 The CM@Risk will prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be pre-qualified by qualifications and competitive bid in accordance with Section 2.7.2 and subcontractor trades will not be pre-qualified through a formalized qualifications-based selection process (competitively bid only). The subcontractor selection plan must be consistent with the selection requirements included in this Contract and the provisions of Chapter 2269 of the Texas Government Code.

2.7.2 Selection by qualifications and competitive bid - The CM@Risk shall apply the subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its process to prequalify prospective subcontractors and suppliers. All Work for major Subconsultants and major Suppliers shall then be competitively bid to the prequalified Subcontractors. Competitive bids may occur prior to or after the GMP Proposal(s).

2.7.2.1 The CM@Risk will develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by the City and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CM@Risk may request approval by the City to submit less than three names. Without prior written notice to the City, no change in the recommended Subcontractors/Suppliers will be allowed.

2.7.2.2 If the City objects to any nominated Subcontractor/Supplier or to any recommended self-performed Work bidding opportunities for good reason, the CM@Risk will nominate a substitute Subcontractor/Supplier that is acceptable to the City.

2.7.2.3 The CM@Risk will distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers.

2.7.2.4 If the CM@Risk desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CM@Risk's bid will be evaluated in accordance with the process identified below. If events warrant and the City concurs that in order to ensure compliance with the Project Schedule and/or cost, or if a Subcontractor is terminated the CM@Risk may self-perform Work without re-bidding the Work.

2.7.2.5 The CM@Risk shall request the pre-qualified subcontractors to provide a detailed bid for the services requested. The subcontractor bid, provided on the subcontractors' letterhead, shall contain sufficient information (i.e. unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. The CM@Risk shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CM@Risk, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids will be done with the City Representative in attendance to observe and witness the process. The CM@Risk will resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

2.7.3 The CM@Risk will be required to prepare two different reports on the subcontracting process.

2.7.3.1 Within fifteen Days after each major Subcontractor/Supplier bid opening process, the CM@Risk will prepare a report for the City's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report will provide (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subagreement, (b) the sum of all recommended Subcontractor/Supplier bids received, (c) a copy of the bids received from each Subcontractor,

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and (d) trade work and its cost that the CM@Risk intends to self-perform, if any.

2.7.3.2 Upon completion of the Subcontractor/Supplier bidding process, the CM@Risk shall submit a summary report to the City of the entire Subcontractor/Supplier selection process. The report will indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received, and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.

2.7.4 The approved Subcontractors/Suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.

2.7.5 If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CM@Risk will nominate a substitute Subcontractor or Supplier, preferably, if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by the City, the CM@Risk's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

2.7.6 Promptly after receipt of the Notice of Intent to Award, the City will conduct a pre-award conference with the CM@Risk and other Project Team members. At the pre-award conference, the CM@Risk will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or Supplier; (b) discuss City concerns relating to any proposed self- performed Work; (c) review the CM@Risk's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining CM@Risk Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of commencement of the Contract Time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters ofimportance.

ARTICLE 3 – PERIOD OF SERVICES

3.1 The design phase services described in this Contract will be performed by CM@Risk in accordance with the most current update/revised Project Schedule. Failure on the part of the CM@Risk to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by the City.

3.1.1 Upon failure to adhere to the approved schedule, City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@Risk's receipt of such notice.

3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the City, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Denton time) on the day of performance.

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

4.1.1 Based on the design phase services fee proposal submitted by the CM@Risk and accepted by the City (which by reference is made a part of this Contract); the City will pay the CM@Risk a lump sum fee in the amount of $2,252,441.

Additional services as described in subsection 4.3:	$200,000
Total Contract Amount, not to exceed,	$2,452,441

4.2 PAYMENTS

4.2.1 Requests for monthly payments by the CM@Risk for design phase services will be submitted in a form acceptable to the City and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.

4.2.2 The fees for additional design phase services provided by the CM@Risk and any Subcontractors or Subconsultants will be based upon the hourly rate schedule included as Exhibit B, attached.

4.2.3 The CM@Risk will pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the CM@Risk has received payment for those services from the City. In no event will the City pay more than 95 percent

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of the Contract Amount until final acceptance of all design phase services, and award of the final approved GMP for the entire Project by City Council.

4.2.4 THE CM@RISK AGREES THAT NO CHARGES OR CLAIMS FOR COSTS OR DAMAGES OF ANY TYPE WILL BE MADE BY IT FOR ANY DELAYS OR HINDRANCES BEYOND THE REASONABLE CONTROL OF THE CITY DURING THE PROGRESS OF ANY PORTION OF THE SERVICES SPECIFIED IN THIS CONTRACT. SUCH DELAYS OR HINDRANCES, IF ANY, WILL BE SOLELY COMPENSATED FOR BY AN EXTENSION OF TIME FOR SUCH REASONABLE PERIOD AS MAY BE MUTUALLY AGREED BETWEEN THE PARTIES. IT IS UNDERSTOOD AND AGREED, HOWEVER, THAT PERMITTING THE CM@RISK TO PROCEED TO COMPLETE ANY SERVICES, IN WHOLE OR IN PART AFTER THE DATE TO WHICH THE TIME OF COMPLETION MAY HAVE BEEN EXTENDED, WILL IN NO WAY ACT AS A WAIVER ON THE PART OF THE CITY OF ANY OF ITS LEGAL RIGHTS HEREIN.

4.2.5 If any service(s) executed by the CM@Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@Risk, the CM@Risk is to be paid for the services performed prior to the abandonment or suspension.

4.3 ADDITIONAL DESIGN PHASE SERVICES

4.3.1 The following additional services will be required for the successful completion of this Project. Mark- ups are not authorized and only the reimbursables specifically identified below will be reimbursed as authorized herein:

4.3.1.1 When authorized by the City, the CM@Risk shall provide special project services as requested by the City. The scope and cost of these services shall be negotiated as the need is identified and shall be based on the hourly rates agreed to under this contract. The cost for these special services shall not exceed $200,000 without further approval of the City.

4.3.1.2 When authorized by the City, the CM@Risk will be entitled to reimbursement at cost for direct expenses related to its performance of design phase services.

ARTICLE 5 - CITY'S RESPONSIBILITIES

5.1 The City, at no cost to the CM@Risk, will furnish the following information:

5.1.1 One copy of data the City determines pertinent to the work. However, the CM@Risk will be responsible for searching the records and requesting information it deems reasonably required for the Project.

5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.

5.1.3 The name of the City employee or City's representative who will serve as the Project Manager during the term of this Contract. The Project Manager has the authority to administer this Contract and will monitor the CM@Risk's compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the Project Manager.

5.2 The City additionally will:

5.2.1 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CM@Risk for its information. The CM@Risk will have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Design Professional.

5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM@Risk except for those copies whose cost has been reimbursed by the City.

5.2.3 Provide the CM@Risk with adequate information in its possession or control regarding the City's requirements for the Project.

5.2.4 Give prompt written notice to the CM@Risk when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@Risk's receipt of such notice.

5.2.5 Notify the CM@Risk of changes affecting the budget allocations or schedule.

5.3 The City's Project Manager will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the City's Project Manager deems appropriate to the CM@Risk.

ARTICLE 6 – CONTRACT CONDITIONS

6.1 PROJECT DOCUMENTS AND COPYRIGHTS

6.1.1 City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited

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to: cost estimates, studies, design analyses, Computer Aided Drafting and Design (CADD) digital files, and other related documents which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the Project Manager before the final payment is made to the CM@Risk. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CM@Risk, which consent the CM@Risk will not unreasonably withhold, the City agrees to hold the CM@Risk harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the City's alteration, modification or adaptation of the Project Documents.

6.1.2 CM@Risk to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@Risk, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CM@Risk, but will remain available for use by the City for this Project under the terms of this Contract.

6.1.3 License to City for Reasonable Use: The CM@Risk hereby grants, and will require its Subconsultants to grant, a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require the City to alter or modify the Project Documents, then paragraph 6.1.1 applies.

6.1.4 Documents to Bear Seal: When applicable and required by state law, the CM@Risk and its Subconsultants will endorse by a Texas professional seal all plans, works, and Deliverables prepared by them for this Contract.

6.2 COMPLETENESS AND ACCURACY OF CM@RISK'S WORK

6.2.1 The CM@Risk will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other design phase Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own expense correct its work or Deliverables. Any damage incurred by the City as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to the CM@Risk to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CM@Risk in Denton, Texas would exercise under similar conditions. The fact that the City has accepted or approved the CM@Risk's work or Deliverables will in no way relieve the CM@Risk of any of its responsibilities under the Contract, nor does this requirement to correct the work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to the City. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the Design Professional.

6.3 ALTERATION IN CHARACTER OF WORK

6.3.1 In the event an alteration or modification in the character of Work or Deliverable results in a substantial change in this Contract, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the Work or Deliverable will nonetheless be performed as directed by the City. However, before any altered or modified Work begins, a Change Order or amendment will be approved and executed by the City and the CM@Risk. Such Change Order or amendment will not be effective until approved by the City.

6.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@Risk may accordingly be adjusted by mutual agreement of the contracting parties.

6.3.3 No claim for extra work done or materials furnished by the CM@Risk will be allowed by the City except as provided herein, nor will the CM@Risk do any work or furnish any material(s) not covered by this Contract unless such work or material is first authorized in writing. Work or material(s) furnished by the CM@Risk without such prior written authorization will be the CM@Risk's sole jeopardy, cost, and expense, and the CM@Risk hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

6.4 DATA CONFIDENTIALITY

6.4.1 As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence, and any other similar documents or information prepared by or obtained by the CM@Risk in the performance of this Contract.

6.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM@Risk in connection with the CM@Risk's performance of this Contract is confidential and proprietary information belonging to the City to the extent allowed by Texas law.

6.4.3 The CM@Risk will not divulge data to any third party without prior written consent of the City. The CM@Risk will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:

6.4.3.1 Data which was known to the CM@Risk prior to its performance under this Contract unless such data was acquired in connection with work performed for the City.

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6.4.3.2 Data which was acquired by the CM@Risk in its performance under this Contract and which was disclosed to the CM@Risk by a third party, who to the best of the CM@Risk's knowledge and belief, had the legal right to make such disclosure and the CM@Risk is not otherwise required to hold such data in confidence; or

6.4.3.3 Data, which is required to be disclosed by the CM@Risk by virtue of law, regulation, or court, including but not limited to the Texas Public Information Act, Texas Government Code Chapter 552.

6.4.4 In the event the CM@Risk is required or requested to disclose data to a third party, or any other information to which the CM@Risk became privy as a result of any other contract with the City, the CM@Risk will first notify the City as set forth in this Article of the request or demand for the data. The CM@Risk will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

6.4.5 The CM@Risk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.

6.4.6 The CM@Risk assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CM@Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

6.5 PROJECT STAFFING

6.5.1 Prior to the start of any work or Deliverable under this Contract, the CM@Risk will submit to the City, an organization chart for the CM@Risk staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, the City hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CM@Risk desires to change such key personnel from performing such services under this Contract, the CM@Risk will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

6.5.2 The CM@Risk will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the City objects, with reasonable cause, to any of the CM@Risk's staff, the CM@Risk will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel acceptable to the City.

6.6 INDEPENDENT CONTRACTOR

6.6.1 The CM@Risk is and will be an independent contractor and whatever measure of control the City exercises over the work or Deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Contract will give or be construed to give the City the right to direct the CM@Risk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

6.7 SUBCONSULTANTS

6.7.1 Prior to beginning the work or Deliverable, the CM@Risk will furnish the City for approval, the names of all Subconsultants, if any, to be used on this Project. Subsequent changes are subject to the approval of the City.

6.8 TERMINATION

6.8.1 The City and the CM@Risk hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been performed by the CM@Risk.

6.8.2 In the event the City abandons any or all of the services or any part of the services as herein provided, the City will so notify the CM@Risk in writing, and the CM@Risk will immediately after receiving such notice is to discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.

6.8.3 The CM@Risk, upon such termination or abandonment, will promptly deliver to the City all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by the City.

6.8.4 The CM@Risk will appraise the work completed and submit an appraisal to the City for evaluation. The City will have the right to inspect the CM@Risk's work or Deliverable to appraise the work completed.

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6.8.5 The CM@Risk will receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable costs and expenses attributable to such termination. The fee will be paid in accordance with Article 4 of this Contract and will be an amount mutually agreed upon by the CM@Risk and the City. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.9, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". The City will make the final payment within sixty Days after the CM@Risk has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

6.9 DISPUTES

6.9.1 In any unresolved dispute arising out of an interpretation of this Contract or the duties required therein, the final determination at the administrative level will be made by the City Manager or their designee.

6.10 WITHHOLDING PAYMENT

6.10.1 The City reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City may have against the CM@Risk, until such time that a settlement on those claims has been reached.

6.11 RECORDS/AUDIT

6.11.1 Records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project, and records of accounts between the City and CM@Risk will be kept on a generally recognized accounting basis and shall be available for up to three years following final completion of the Project. The City, its authorized representative, and/or the appropriate federal agency, 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 this Contract and any Change Orders. The City reserves the right to decrease Contract Amount and/or payments made on this Contract 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.

6.11.2 The CM@Risk will include a provision similar to paragraph 6.11.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if the above provision is not included in Subconsultant, Subcontractor, and Supplier contracts, and one or more of those parties do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

6.12 INDEMNIFICATION

6.12.1 The CM@Risk agrees to defend, 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 officers, agents and employees, hereinafter individually and collectively referred to as "indemnitee", from all suits and claims, including attorney's fees and cost of litigation, actions, losses, damage, expenses, costs or claims of any character or any nature arising out of the Work or Deliverable done in fulfilling the terms of this Contract, or on account of any act, claim or amount arising out of or recovered under Workers' Compensation Law, or arising out of the failure of the CM@Risk 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 Contract of indemnity applies. In consideration of the award of this contract, the CM@Risk agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the CM@Risk for the City.

6.13 NOTICES

6.13.1 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 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:

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To City:	City of Denton Purchasing Manager – File 8289 901B Texas Street Denton, TX 76201 City of Denton David Brown – Project Manager 901A Texas Street Denton, TX 76201
To CM@Risk	Stephen Bradford Sundt Construction, Inc. 2015 W. River Rd. #101 Tucson, AZ 85704
Copy to: Design Professional	Colton Hermes

Or to other such 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.

6.14 EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

6.14.1 The CM@Risk will comply with the provisions of this Contract, pertaining to discrimination and accepting applications or hiring employees. The CM@Risk will 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 will 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 Contract. The CM@Risk further agrees that this clause will be incorporated in all Subcontracts, and Subconsultants and Suppliers contracts associated with the Project and entered into by the CM@Risk.

6.15 COMPLIANCE WITH FEDERAL LAWS

6.15.1 The CM@Risk understands and acknowledges the applicability of the Americans 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 and all laws in performing this Contract and to permit the City to verify such compliance.

6.16 CONFLICT OF INTEREST

6.16.1 To evaluate and avoid potential conflicts of interest, the CM@Risk will provide written notice to the City, as set forth in this section, of any work or services performed by the CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice will be given seven business days prior to commencement of the Project by the CM@Risk for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

City of Denton
Attn: Purchasing Manager
Materials Management
901B Texas Street
Denton, TX 76209

6.16.2 Actions considered to be adverse to the City under this Contract include but are not limited to:

(a) Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City.

(b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and

(c) Using data to produce income for the CM@Risk or its employees independently of performing the services under this Contract, without the prior written consent of the City.

6.16.3 The CM@Risk represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CM@Risk under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

6.16.4 The CM@Risk's failure to provide a written notice and disclosure of the information as set forth in this section will constitute

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a material breach of this Contract.

6.17 CONTRACTOR'S LICENSE

6.17.1 Prior to award of the Contract, the CM@Risk must provide to the City's Project Manager, its Contractor's License Classification and number, if any, and its Federal Tax I.D. number.

6.18 SUCCESSORS AND ASSIGNS

6.18.1 The City and the CM@Risk will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither the City nor the CM@Risk will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

6.19 FORCE MAJEURE

6.19 The City of Denton, the CM@Risk, and any Subcontractors shall not be responsible for performance under this Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton, the CM@Risk, and any Subcontractors. In the event of an occurrence under this Section, the City of Denton, 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 City of Denton, 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. The CM@Risk and any Subcontractors shall immediately notify the City of Denton Project Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

6.20 COVENANT AGAINST CONTINGENT FEES

6.20.1 The CM@Risk warrants that no person has been employed or retained to solicit or secure this Contract 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. The City of Denton will in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

6.21 NON-WAIVER PROVISION

6.21.1 The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Contract or any part thereof, or the right of either party to thereafter enforce each and every provision.

6.22 JURISDICTION

6.22.1 This Contract will be deemed to be made under and will 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. Under the provisions of Chapter 272 of the Texas Local Government Code, the City has waived its immunity by entering into this Contract. However, the City's sovereign immunity is waived only to the extent set forth by statute. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought and tried in the State District Courts located in 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.

6.23 SURVIVAL

6.23.1 All warranties, representations, and indemnifications by the CM@Risk will survive the completion or termination of this Contract.

6.24 MODIFICATION

6.24.1 No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract, except as expressly provided herein to the contrary.

6.25 SEVERABILITY

6.25.1 If any provision of this Contract or the application thereof to any person or circumstance will be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

6.26 INTEGRATION

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6.26.1 This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

6.27 TIME IS OF THE ESSENCE

6.27.1 Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence.

6.28 THIRD PARTY BENEFICIARY

6.28.1 This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the CM@Risk. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the CM@Risk and not for the benefit of anyother party.

6.29 COOPERATION AND FURTHER DOCUMENTATION

6.29.1 The CM@Risk agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

6.30 CONFLICT IN LANGUAGE

6.30.1 All work or Deliverables performed will conform to all applicable City of Denton codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits, the provisions in this Contract will prevail.

6.31 CITY'S RIGHT OF CANCELLATION

6.31.1 All parties hereto acknowledge that this Contract is subject to cancellation by the City of Denton pursuant to the provisions of Texas Local Government Code Chapters 252 and 272, Texas Government Code Chapter 2269, and the general laws of the State of Texas.

6.32 CONFIDENTIALITY OF PLANS & SPECIFICATIONS

6.32.1 Any plans or specifications received by the CM@Risk regarding this project are for official use only. The CM@Risk may not share them with others except as required to fulfill contract obligations with the City of Denton.

6.32.2 Any plans the CM@Risk generates must include the following statement in the Title Block on every page: “These plans are for Official use only and may not be shared with others except as required to fulfill the obligations of CM@Risk’s contract with the City of Denton. This document must be kept secure at all times.”

ARTICLE 7 – INSURANCE REQUIREMENTS

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

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

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 Contract by the CM@Risk, his agents, representative, employees, or Subconsultants. CM@Risk is free to purchase such additional insurance as may be determined necessary.

7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

7.1.1 CM@Risk will provide coverage at least as broad and with limits of liability not less than those stated below.

7.1.1.1 Commercial General Liability-Occurrence Form

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate	$2,000,000
Products-Completed Operations Aggregate	$1,000,000
Personal & Advertising Injury	$1,000,000
Each Occurrence	$1,000,000

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(a) The policy shall be endorsed to include the following additional insured language: "The City of Denton 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". Policy shall contain waiver of subrogation against the City of Denton.

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

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

(a) The policy shall be endorsed to include the following additional insured language: "The City of Denton 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 or hired or borrowed by the CM@Risk".

7.1.1.3 Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability	
Each Accident	$ 100,000
Disease – Each Employee	$ 100,000
Disease – Policy Limit	$ 500,000

(a) Policy shall contain waiver of subrogation against the City of Denton.

7.2 ADDITIONAL INSURANCE REQUIREMENTS

7.2.1 The policies shall include, or be endorsed to include, the following provisions.

7.2.2 On insurance policies where the City of Denton is named as 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 Contract.

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

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

7.3 SUBCONSULTANT INSURANCE

7.3.1 CM@Risk's certificate(s) shall include all subcontractors as additional insureds under its policies or subconsultants shall maintain separate insurance as determined by the CM@Risk, however, subconsultants limits of liability shall not be less than $1,000,000 per occurrence / $2,000,000 aggregate.

7.4 NOTICE OF CANCELLATION

7.4.1 Each insurance policy required by the insurance provisions of this Contract will provide the required coverage and not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent by certified mail, return receipt requested and sent directly to the City's Purchasing Manager at:

City of Denton
Attn: Purchasing Manager – Contract 8289
Purchasing
901B Texas Street
Denton, TX 76209

7.5 ACCEPTABILITY OF INSURERS

7.5.1 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 not less than A-.. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

7.6 VERIFICATION OF COVERAGE

7.6.1 The CM@Risk will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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

7.6.3 All certificates required by this Contract will be sent directly to the Engineering and Architectural Services Department Contracts Administration Section contracts officer for this Project. The City project/contract number and project description shall be noted on the certificates of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.

7.7 APPROVAL

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

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on 02/06/2024.

CITY OF DENTON, TEXAS

DocuSigned by:
BY: Sara Hensley
5236DB296270423...

Sara Hensley
Printed Name

City Manager
Title

CM@Risk:

DocuSigned by:
BY: Stephen Bradford
E0405276AFF0453...

Stephen Bradford
Printed Name

Senior Vice President
Title

ATTEST:
JESUS SALAZAR, CITY SECRETARY

DocuSigned by:
Jesus Salazar
2437C77B897541D...
Signature

APPROVED AS TO FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
Marcella Lunn
4B070831B4AA438...
Signature

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

DocuSigned by:
Steven Gay Steven Gay
9EBFF5658E56492...
SIGNATURE PRINTED NAME

Director,
TITLE

Water Utilities
DEPARTMENT

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EXHIBIT A – PROJECT DESCRIPTION

Following is a brief description of the Project for which the design phase service services specified in this Contract are to be performed:

Improvements to the existing 21 million gallon per day (MGD) Pecan Creek Water Reclamation Plant. The improvements include a new 75 MGD headworks, a 5 MGD expansion of the existing facility and new solids processing for the expanded 26 MGD facility. The work will generally consist of the following:

- Primary clarifiers
- 5 MGD membrane bioreactor
- Blower building and associated aeration equipment
- Ultraviolet disinfection
- Anaerobic digesters
- Solids thickening
- Anaerobic digesters
- Solids dewatering building and associated equipment
- Ancillary improvements to the existing facility
- Approx. 2100 LF of 60” Sanitary Sewer from Existing Headworks to Proposed Headworks
- Approx. 2,400LF of 48” Sanitary Sewer from South Peak Flow Basin to Proposed Headworks.
- Approx. 1750 LF of 48” Piping from Proposed Headworks to Existing Grit Chamber
- Approx. 1,000 LF of 48” Piping from Proposed Headworks to Existing Basin
- 5QTY 8-Foot Diameter Sanitary Sewer Manhole
- 11QTY 6-Foot Diameter Sanitary Sewer Manhole
- 5QTY 5-Foot Diameter Sanitary Sewer Manhole

Services to be performed, as defined within this agreement, include the following:

- Performance of preconstruction services in alignment with City of Denton project goals and to facilitate a successful construction project as defined within this agreement, the conditions of success meetings and the Construction Management Plan.
- Meeting attendance and other team interaction to allow cohesion, communicate needs, meet contract requirements and to establish and maintain Sundt’s understanding of all work required to be complete as part of this project.
- Sundt and Kimley Horn coordination meetings and other interaction to the benefit of the City of Denton.
- Development and refinement of the Construction Management Plan to include the requirements of section 2.2 of this Agreement.
- Sundt will generate and maintain a CMAR risk register which will be used to influence decision making and to ensure ownership of risk is identified and memorialized.
- Open book estimating services to ensure adequate and early cost communication and budget impacts to facilitate effective project team decision making.
    - Estimates to be developed at intervals to align with engineering deliverables as defined in section 2.5 of this agreement.
    - The number, level of detail and time required to develop estimates will be as agreed upon by the parties
- Scheduling services to ensure adequate and early communication of accuracy and risks to the City of Denton’s requirements for construction completion.
    - Schedules will be developed at intervals to align with engineering deliverables as defined in section 2.3 of this Agreement.
    - The number, level of detail and time required to develop schedules will be as agreed upon by the parties.
    - Sundt requires participation and input from Kimley Horn in the development of design deliverables to align with construction sequencing. It is imperative that Sundt’s schedule includes a detailed schedule from Kimley Horn for all design phase activities and that this schedule is managed in the best interest of the construction timeline of the project.
- Constructability and Biddability reviews of documents as design phase deliverables are issued.
- Value Engineering reviews of documents as design phase deliverables are issued.
    - Includes management and communication of cost impacts of design decisions identified by the parties as part of the Sundt’s Design Evolution Log. Design decisions requiring pricing will be identified by the project team during design meetings and as otherwise communicated to Sundt in writing by the parties.
    - Value engineering items will be managed within the Design Evolution Log as well to ensure timely review and to ensure cost related decisions are memorialized to the greatest extent possible.

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- Subcontractor and supplier outreach, bidding and selection in preparation for GMP.
    - Sundt will undertake to engage with local and national resources as required to garner interest in the project from trade partners.
    - Sundt will manage a bidders list and will seek approval of the list from the City of Denton.
    - Sundt's trade partner outreach events will include an open invitation to City of Denton and Kimley Horn staff.
- Development of a GMP to meet the requirements of section 2.6 of this Agreement.
- Additional services, included in section 4.1.1 as an allowance, as needed to facilitate planning including:
    - Potholing of existing utilities to facilitate design and construction planning.
    - Soils testing and earthwork productivity analysis to facilitate design and estimating.
    - Other site and utility investigations as needed.
    - Other services as identified by the parties during preconstruction.

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EXHIBIT B - HOURLY RATE SCHEDULE

The schedule of hourly labor rates for employees of the CM@Risk and its Subconsultants follow and are based on the approved proposal submitted to the City.

LIST OF CLASSIFICATIONS:

PRECON SERVICES - BASE SCOPE	RATE	UM	NOTES
PROJECT MANAGER	$ 228.00	MH	PER PRECON SERVICES PROPOSAL
CONSTRUCTION MANAGER	$ 210.00	MH	PER PRECON SERVICES PROPOSAL
PROJECT ENGINEER	$ 152.00	MH	PER PRECON SERVICES PROPOSAL
SCHEDULER	$ 128.00	MH	PER PRECON SERVICES PROPOSAL
BIM	$ 157.00	MH	PER PRECON SERVICES PROPOSAL
SAFETY	$ 160.00	MH	PER PRECON SERVICES PROPOSAL
QUALITY	$ 183.00	MH	PER PRECON SERVICES PROPOSAL
PRECON LEAD	$ 175.00	MH	PER PRECON SERVICES PROPOSAL
PRECON LEAD	$ 175.00	MH	PER PRECON SERVICES PROPOSAL
SENIOR ESTIMATOR	$ 130.00	MH	PER PRECON SERVICES PROPOSAL
JUNIOR ESTIMATOR	$ 101.00	MH	PER PRECON SERVICES PROPOSAL
PROJECT ADMINISTRATOR	$ 85.00	MH	PER PRECON SERVICES PROPOSAL
TRAVEL AND EXPENSES	$ 196,528.00	LS	BILLED AT COST
OUT REACH EVENTS	$ 6,000.00	LS	BILLED AT COST
3RD PARTY LABOR STUDIES	$ 18,000.00	LS	BILLED AT COST

ADDITIONAL SCOPE ALLOWANCE	RATE	UM	NOTES
LABOR*			
GENERAL FOREMAN	$ 88.53	MH	50 HOUR RATE - NO MARKUPS
FOREMAN	$ 67.25	MH	50 HOUR RATE - NO MARKUPS
CRANE OPERATOR	$ 72.92	MH	50 HOUR RATE - NO MARKUPS
OPERATOR	$ 58.74	MH	50 HOUR RATE - NO MARKUPS
ELECTRICIAN	$ 113.64	MH	50 HOUR RATE - INCLUDES ANTICIPATED ELECTRICAL CONTRACTOR MARKUPS
PIPELAYER	$ 55.90	MH	50 HOUR RATE - NO MARKUPS
PIPEFITTER	$ 70.09	MH	50 HOUR RATE - NO MARKUPS

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PIPE WELDER	$ 72.92	MH	50 HOUR RATE - NO MARKUPS
LABORER	$ 53.07	MH	50 HOUR RATE - NO MARKUPS
SUPERINTENDENT	$ 147.95	MH	NO MARKUPS
ELECTRICAL SUPERINTENDENT	$ 221.93	MH	INCLUDES ANTICIPATED ELECTRICAL CONTRACTOR MARKUPS
FIELD ENGINEER	$ 89.90	MH	NO MARKUPS
*RATES INCLUDE SUBSISTENCE, SMALL TOOLS & SAFETY SUPPLIES, NO CONSUMABLES			
TRADE PARTNERS			
POTHOLING CONTRACTOR	$ 2,400.00	10 HR SHIFT	AIMS QUOTE FROM BONNIE BRAE PROJECT - PORTAL TO PORTAL
STREET SWEEPING CONTRACTOR	$ 845.00	3 HR SHIFT	MR SWEEPER QUOTE
CONFINED SPACE RESCUE SERVICES	$ 3,900.00	12 HR SHIFT	TEXAS RESCUE PHONE QUOTE - 12 HR MIN CHARGE
EQUIPMENT			
LOADER GRADER TRACTOR - GANNON	$ 77.67	HR	BLUEBOOK, NO MARKUP
CAT 420 LOADER/BACKHOE	$ 92.92	HR	BLUEBOOK, NO MARKUP
EXCAVATOR CAT 320	$ 128.97	HR	BLUEBOOK, NO MARKUP
WALK BEHIND PLATE COMPACTOR	$ 41.24	HR	BLUEBOOK, NO MARKUP
CRANE CRAWLER 100T	$ 438.76	HR	BLUEBOOK, NO MARKUP
CRANE RT 90T	$ 365.45	HR	BLUEBOOK, NO MARKUP
FORKLIFT REACH 10K	$ 159.00	HR	BLUEBOOK, NO MARKUP
GENERATOR TRAILER MOUNT 15KW	$ 10.36	HR	BLUEBOOK, NO MARKUP
LIGHT PLANT STANDARD	$ 18.80	HR	BLUEBOOK, NO MARKUP
PUMP - 3"-4"	$ 36.29	HR	BLUEBOOK, NO MARKUP
WATER BUFFALO 500 GALLON	$ 3.97	HR	BLUEBOOK, NO MARKUP
DUMP TRUCK - 12 YARD	$ 94.74	HR	BLUEBOOK, NO MARKUP

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EXHIBIT C - SUBMITTAL REQUIREMENTS FOR THE GMP

GMP submittal, one copy for review.

One printed, signed original copy and a digital copy in searchable PDF format will be requested by the City of Denton prior to contract execution.

Table of Contents:

1. Scope of Work
2. Summary of the GMP
3. Schedule of Values – summary spreadsheet and backup documents
4. List of Plans and Specifications used for GMP Proposal
5. List of clarification and assumptions
6. Project Schedule

1. Scope of work will consist of a brief description of the work to be performed by CM@Risk and major points that the CM@Risk and the City must be aware of pertaining to the scope. (normally one paragraph is sufficient.)

2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:

   The general conditions fee includes bond and insurance cost. All costs should be listed individually for future use.

PROJECT #: **DATE:**
PROJECT NAME:

GMP Summary					**AMOUNT**
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)				$
B.	CM@Risk's Contingency				$
INDIRECT COSTS				RATE	
C.	Construction Fee			%	$
D.	General Conditions				$
	D1	Payment and Performance Bond	$		
	D2	Insurance	$		
			E. TOTAL GMP		**$**
			F. Owner's Contingency		**$**
			G. Contract Amount		**$**

Substantial Completion _____ Calendar Days

Final Completion _____ Calendar Days

Formulas:
Total GMP: A+B+C+D = E

(**Do not acquire bond or insurance until notified by the City of Denton Project Manager.)**

3. Schedule of Values - spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CM@Risk's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.

4. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. The plans used for the GMP must be date stamped and signed by CM@Risk, Design Consultant, and Project Manager using the format below.

DocuSign Envelope ID: 74CF6F67-D74E-42F8-85E6-A4637A93F76C

Plans Used For Preparation of GMP No.	
CM@Risk	Date
Design Consultant	Date
Project Manager	Date

5. A list of the clarifications and assumptions made by the CM@Risk in the preparation of the GMP proposal, to supplement the information contained in the documents.

6. A Critical Path Method (CPM) diagram construction schedule.

NOTE: The submittal package must be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

Final GMP submittal will consist of the following:

1. One printed copy of the GMP and one digital copy in searchable PDF format.

2. One copy of the plans and technical specifications used to arrive at the GMP (signed by Design Professional, CM@Risk and City's Project Manager).

For questions regarding the submittal requirements, please contact City of Denton Project Manager.

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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 relations hip 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:
Stephen Bradford
E0405276AFF0453...
Signature of vendor doing business with the governmental entity

12/28/2023
Date

DocuSign Envelope ID: 74CF6F67-D74E-42F8-85E6-A4637A93F76C

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

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

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

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

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

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

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

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

(2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

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

(1) the date that the vendor:

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

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

(2) the date the vendor becomes aware:

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

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

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

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.

ORDINANCE NO. 25-1344

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A FIRST AMENDMENT TO A CONSTRUCTION MANAGER AT RISK (CMAR) PRECONSTRUCTION SERVICES CONTRACT BETWEEN THE CITY OF DENTON AND SUNDT CONSTRUCTION, INC., AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON FEBRUARY 6, 2024, IN THE NOT-TO-EXCEED AMOUNT OF $2,452,441.00, SAID FIRST AMENDMENT TO PROVIDE ADDITIONAL PRECONSTRUCTION DESIGN SERVICES AND EXPAND THE TIMELINE FOR THE PECAN CREEK WATER RECLAMATION PLANT HEADWORKS AND EXPANSION PROJECT FOR THE WATER UTILITIES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8289 - PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED $296,273.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED $2,748,714.00).

WHEREAS, on February 6, 2024, City Council awarded a contract to Sundt Construction, Inc. in the amount of $2,452,441.00, for pre-construction services of the Pecan Creek Water Reclamation Plant Expansion Project for the Water Utilities Department; and

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

WHEREAS, the additional fees under the proposed First Amendment are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees applicable to the Provider's profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The First Amendment, increasing the amount of the contract between the City and Sundt Construction, Inc., which is on file in the office of the Purchasing Agent, in the amount of Two Hundred Ninety-Six Thousand Two Hundred Seventy-Three and 0/100 ($296,273.00) Dollars, is hereby approved, and the expenditure of funds therefor is hereby authorized in accordance with said amendment which shall be effective upon the execution of the amendment attached hereto. The total contract amount increases to $2,748,714.00.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Jill Jester and seconded by Brandon Chase McGee. This ordinance was passed and approved by the following vote [6 - 0]:

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

PASSED AND APPROVED this the 5th day of August, 2025.

GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: Lauren Thoden

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn

Docusign Envelope ID: A70388BE-C1B7-4F99-BDAE-288E261E2A74

Docusign City Council Transmittal Coversheet

RFP	8289
File Name	CMAR for PCWTP Headworks and Expansion - Amendment #1
Purchasing Contact	Cori Power
City Council Target Date	AUGUST 5, 2025
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	25-1344

DS
LH

Docusign Envelope ID: A70388BE-C1B7-4F99-BDAE-288E261E2A74

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

FIRST AMENDMENT TO CONTRACT
BY AND BETWEEN THE CITY OF DENTON, TEXAS
AND **SUNDT CONSTRUCTION, INC. 8289**

THIS FIRST AMENDMENT TO CONTRACT 8289 ("Amendment") by and between the City of Denton, Texas ("City") and **SUNDT CONSTRUCTION, INC.** ("CM@Risk") to that certain contract executed on February 6, 2024, in the original not-to-exceed amount of $2,452,441.00 (the "Agreement"); for services related to the **PCWRP Headworks and Expansion Project.**

WHEREAS, the City deems it necessary to further expand the services provided by CM@Risk to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount $296,273.00 with this First Amendment for an aggregate not-to-exceed amount of $2,748,714.00; and

NOW THEREFORE, the City and CM@Risk (hereafter collectively referred to as the "Parties"), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following First Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1. This Amendment modifies the Agreement amount to provide an additional $296,273.00 for additional services and materials to be provided in accordance with the terms of the Agreement with a revised aggregate not-to-exceed total of $2,748,714.00.

2. The additional services described in Exhibit "A" of this Amendment, attached hereto and incorporated herein for all purposes, for the Construction Manager at Risk preconstruction design services for the Pecan Creek Water Reclamation Plant Headworks and Expansion Project, are hereby authorized to be performed by CM@Risk. For and in consideration of the additional services to be performed by CM@Risk, the City agrees to pay, based on the cost estimate detail attached as Exhibit "A".

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and the CM@Risk, have each executed this Amendment, by and through their respective duly authorized representatives and officers on this date 08/05/2025.

"CM@Risk"
SUNDT CONSTRUCTION, INC.

DocuSigned by:
By: Stephen Bradford President
E0D5276AFE0453...
AUTHORIZED SIGNATURE, 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
FE548B5972BE4A9...
SIGNATURE PRINTED NAME

General Manager
TITLE

Water Utilities and Street Operations
DEPARTMENT

APPROVED AS TO FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
BY: Marcella Lunn
4B070831B4AA438...

"CITY"

CITY OF DENTON, TEXAS
A Texas Municipal Corporation

DocuSigned by:
By: Sara Hensley City Manager
F286DB290270423...
AUTHORIZED SIGNATURE, TITLE

ATTEST:
LAUREN THODEN, CITY SECRETARY

DocuSigned by:
By: Lauren Thoden
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CHANGE ORDER

Exhibit A

(Simulates AIA Document G701)

CONTRACTOR: Sundt Construction, Inc.
2620 S. 55th Street, Tempe, AZ 85282
Contractor Project No.: 162482

CO NO.: 0001

DATE: 06/26/2025

PROJECT: PRECON Pecan Creek WRP
1100 S. Mayhill Road
Denton, Texas 76201

CONTRACT DATE: 02/06/2024

Time Delay Due to Change from 5 vs 26 MGD Expansion

Preconstruction time delay due to changing from 5 vs 26 MGD Expansion.

The Contract is hereby revised by the following items:

Issue	Description	Amount
1	Time Delay Due to Change from 5 vs 26 MGD Expansion	$ 296,273.00

Total: **$ 296,273.00**

Not valid until signed by the Owner and Contractor	
The original Contract sum was	$ 2,452,441.00
Net change by previously authorized Change Orders	$ 0.00
The Contract sum prior to this Change Order was	$ 2,452,441.00
The Contract sum will be increased by this Change Order in the amount of	$ 296,273.00
The new Contract sum including this Change Order will be	$ 2,748,714.00
The Contract time will be changed by this Change Order by	days
The date of Substantial Completion including this Change Order is	08/11/2026

CONTRACTOR	**CLIENT/OWNER**
Sundt Construction, Inc.	City of Denton
By: _____	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Docusign Envelope ID: A70388BE-C1B7-4F99-BDAE-288E261E2A74

City Of Denton PCWRP Headworks and Expansion Project
901 B Texas St Denton TX 76209

SUNDT

Subcontractor Name	Sundt Construction Inc	Issue #	
Address		Issue Description	
Estimator	Curt Klepper	Location of Work	Headworks and Expansion Project
Phone	480.932.3989	Documents / Sheets	
Email	caklepper@sundt.com	Date	5/21/2025

DESCRIPTION OF PROPOSED WORK

Delay time due to change from 5 vs 26 MGD Expansion

LABOR

QUANTITY	UNIT	DESCRIPTION	MAN PER UNIT	HOURS PER ACTIVITY	RATE	LABOR COST
1	EA	Curt Klepper (Precon Lead)	1	552	$ 175.00	$ 96,600.00
1	EA	Jonah Bocanegra (Project Engineer)	1	536	$ 152.00	$ 81,472.00
1	EA	James Roberts (Construction Manager)	1	184	$ 210.00	$ 38,640.00
1	EA	Andrew Crouse (Project Manager)	1	174	$ 228.00	$ 39,672.00
1	EA	Connor Patterson (Senior Estimator)	1	16	$ 130.00	$ 2,080.00
1	EA	Sue Saksena (Senior Estimator)	1	8	$ 130.00	$ 1,040.00
1	EA	Jeff Grigsby (Project Manager - Transportation	1	48	$ 228.00	$ 10,944.00
1	EA	Nick Shumate (Precon Lead - Transportation)	1	33	$ 175.00	$ 5,775.00
1	EA	Dan Kershaw (Senior Estimator)	1	20	$ 130.00	$ 2,600.00
1	EA	Greg Page (Junior Estimator)	1	8	$ 101.00	$ 808.00
1	EA	Tyler Kechely (Project Engineer)	1	56	$ 152.00	$ 8,512.00
1	EA	Dan Graupman (Senior Estimator)	1	39	$ 130.00	$ 5,070.00
1	EA	Cameron Grant (Senior Estimator - Transporta	1	6	$ 130.00	$ 780.00
1	EA	Michael Rivera (Senior Estimator)	1	2	$ 130.00	$ 260.00
1	EA	Andrew Martinez (Junior Estimator)	1	20	$ 101.00	$ 2,020.00
					$ -	$ -
					$ -	$ -
					$ -	$ -
					$ -	$ -
					$ -	$ -
					$ -	$ -
					$ -	$ -
				LABOR TOTAL COST		$ 296,273.00

MATERIAL

QUANTITY	UNIT	DESCRIPTION	RATE	MATERIAL COST
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			MATERIAL TOTAL COST	$ -

EQUIPMENT / OTHER

QUANTITY	UNIT	DESCRIPTION	RATE	EQUIPMENT COST
				$ -
				$ -
				$ -
				$ -
				$ -
				$ -
			EQUIPMENT TOTAL COST	$ -
			INDIRECTS	$ -
			OH & FEE	$ -
			SUBCONTRACTOR TOTAL	$ 296,273.00

Pecan Creek Water Reclamation Plant Expansion

Construction Manager at Risk
Construction Phase Contract
GMP 1

CITY OF DENTON

PUB26-009 - February 23, 2026

Pecan Creek Expansion Plan Overview

- New Water Reclamation Plant 30MGD treatment capacity utilizing membrane bioreactor (MBR) technology with improved solids sandling and disinfection, a new interceptor and headworks structure and control operations building

Construction Manager at Risk (CMAR) GMP Process

1. PCWRP was separated into four (4) categories of work and publicly bid by the CMAR for competitive pricing (Testing & Inspections, Site Surveying, Earthworks & Excavation, Site Utility & Yard Piping

2. CMAR held interviews with all of the bidding firms to confirm scope and pricing to convert work packages to lump sum.

3. SUNDT Construction, Inc. provided a Guaranteed Maximum Price (GMP) based on subcontractor bids, general condition costs, bond and insurance requirements, CMAR contingency, and the contractor's fee.

GMP1 Package Consists of:

Work Category	Awarded to:	Price
Testing and Inspections	Alliance Geotechnical Group	$771,717.30
Site Surveying	Hanna Engineering & Surveying	$89,195.80
Earthworks & Excavation	Sundt Construction, Inc.	$38,185,991.00
Site Utility & Yard Piping	Sundt Construction, Inc.	$23,978,533.00
	Cost of Work	**$63,025,437.10**

CMAR Construction Work Categories Cost Summary

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

PCWRP Expansion

Project Schedule

- 6/6/2023 Design Approval
- 2/6/2024 CMAR Approval
- 4/1/2026 Notice to Proceed (GMP 1)
- Q4 2031 Estimated Construction Completion

Staff Recommendation

Adoption of a contract between the City of Denton and SUNDT Construction in the not-to-exceed amount of $92,321,565.

- Total CMAR GMP $89,261,424
- Owner's Contingency $3,060,141

Questions?

CITY OF DENTON

PUB26-009 - February 23, 2026

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.

RFP NUMBER	CONTRACTOR	AMOUNT
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

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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	

Initial
LH

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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:

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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 Contact. 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.

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"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.

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"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.

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"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.

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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

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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

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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.

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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.

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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

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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.

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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.

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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.

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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

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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.

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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.

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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

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(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.

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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.

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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.

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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

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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

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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.

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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.

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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.

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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.

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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;

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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.

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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

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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

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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.

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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 reprocurement 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.

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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

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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

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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

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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.

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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

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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.

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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.

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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 fora 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:

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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.

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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.

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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.

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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.

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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
4B07083TB4AA438...

CM@Risk

BY: DocuSigned 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
FEB48DB9726E4A9...
SIGNATURE

Stephen D. Gay
PRINTED NAME

General Manager
TITLE

Water Utilities and Street Operations
DEPARTMENT

Docusign Envelope ID: 2BDA2EE8-AFB4-4B50-8CFB-AF6CA58CB79C

EXHIBIT A - PROJECT DESCRIPTION

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

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EXHIBIT B – APPROVED GMP PROPOSAL

Docusign Envelope ID: 2BDA2EE8-AFB4-4B50-8CFB-AF6CA58CB79C

DENTON

PCWRP HEADWORKS & EXPANSION PROJECT

90% GMP 1

02.04.2026

SUNDT

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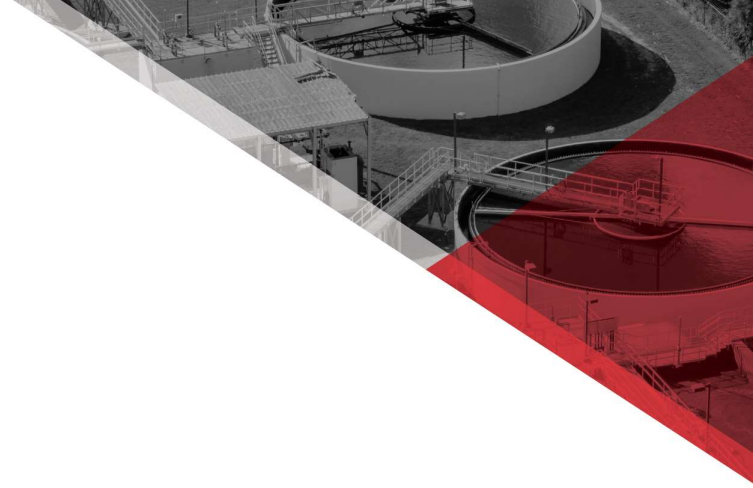


SUNDT

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,

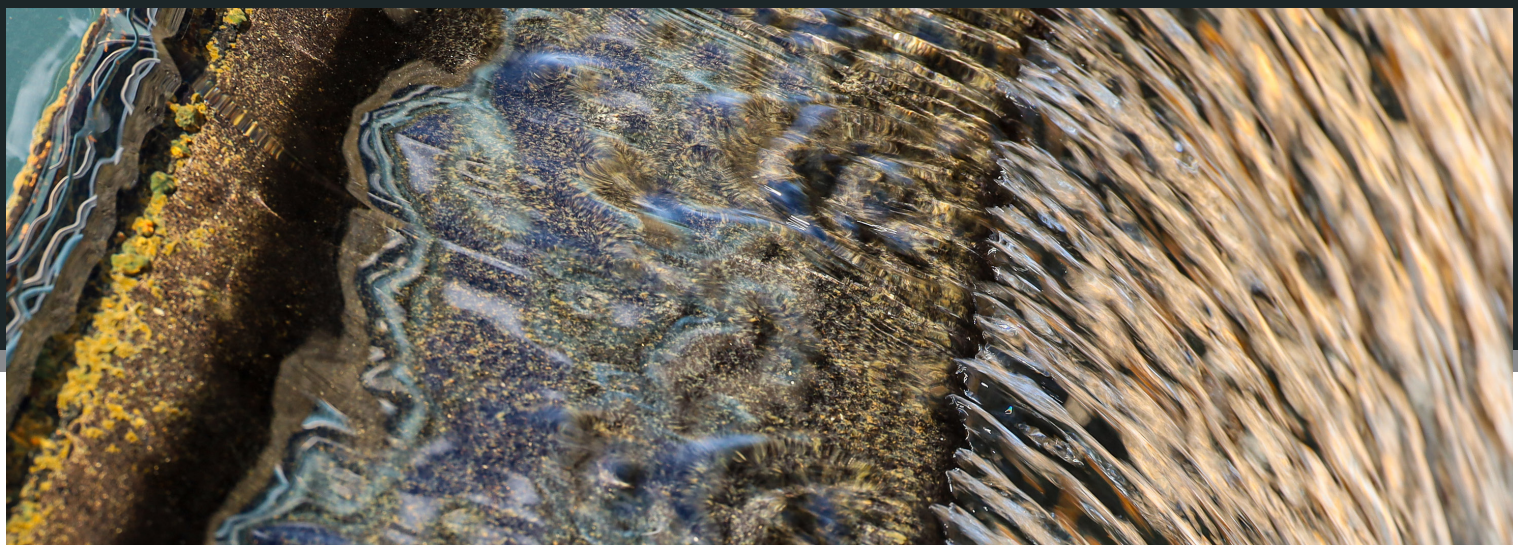
Sundt Construction is pleased to submit the enclosed Guaranteed Maximum Price (GMP) Proposal for the City of Denton Pecan Creek WRP Headworks and Expansion Project. This GMP has been developed based upon our review and understanding of the 90% Design Documents submitted by Kimley-Horn to the City of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

Docusign Envelope ID: 2BDA2EE8-AFB4-4B50-8CFB-AF6CA58CB79C



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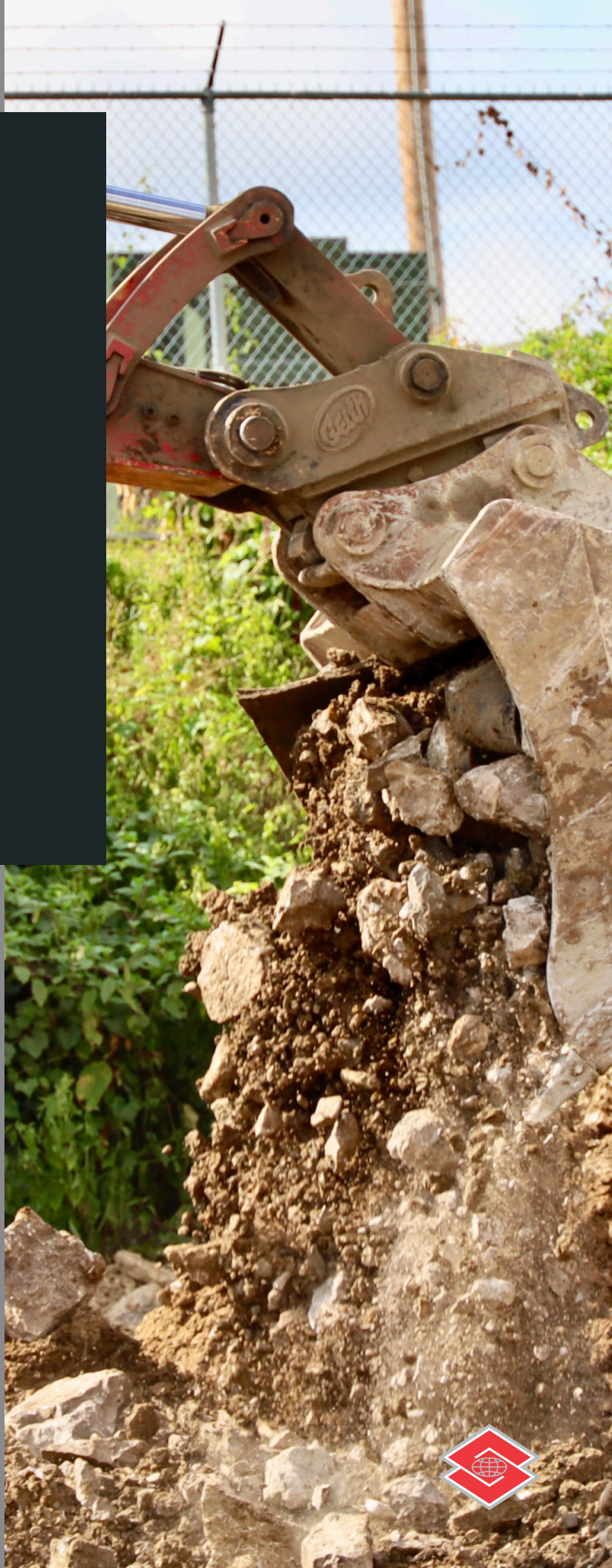
1

SCOPE OF WORK



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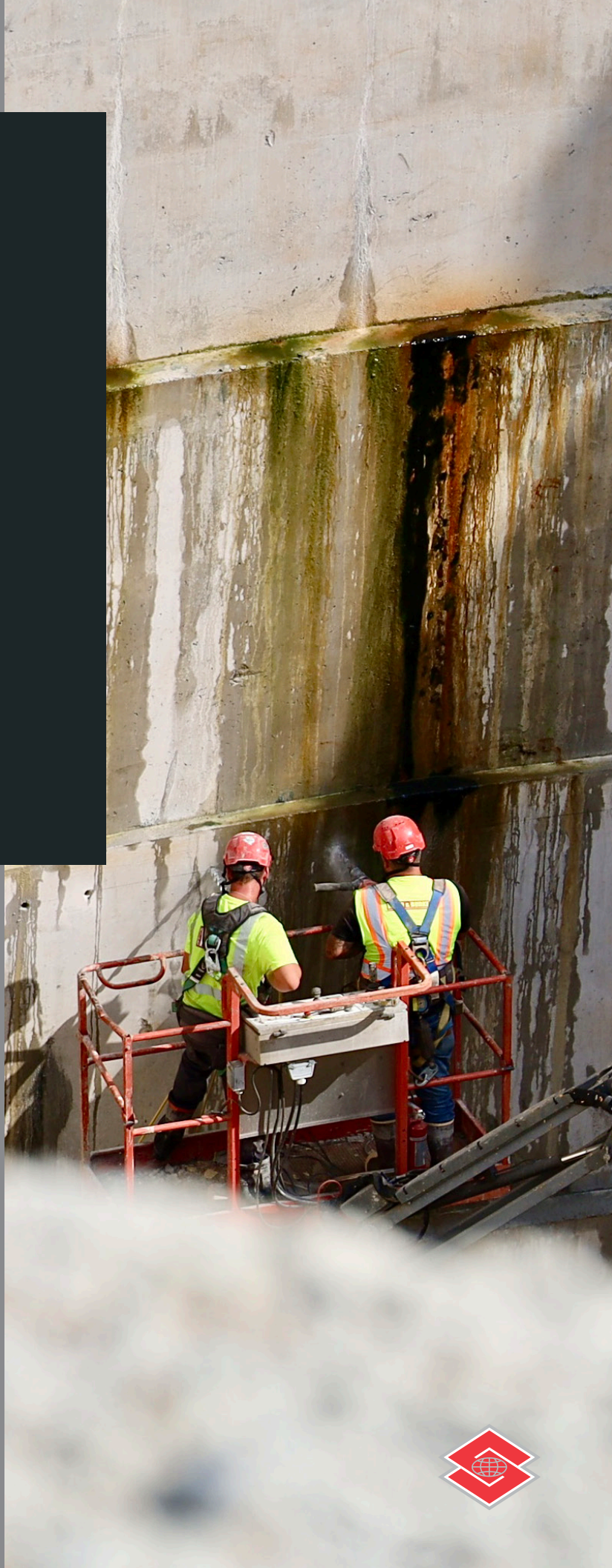
SCOPE OF WORK

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.

Docusign Envelope ID: 2BDA2EE8-AFB4-4B50-8CFB-AF6CA58CB79C

2

SUMMARY OF THE GMP



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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**

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

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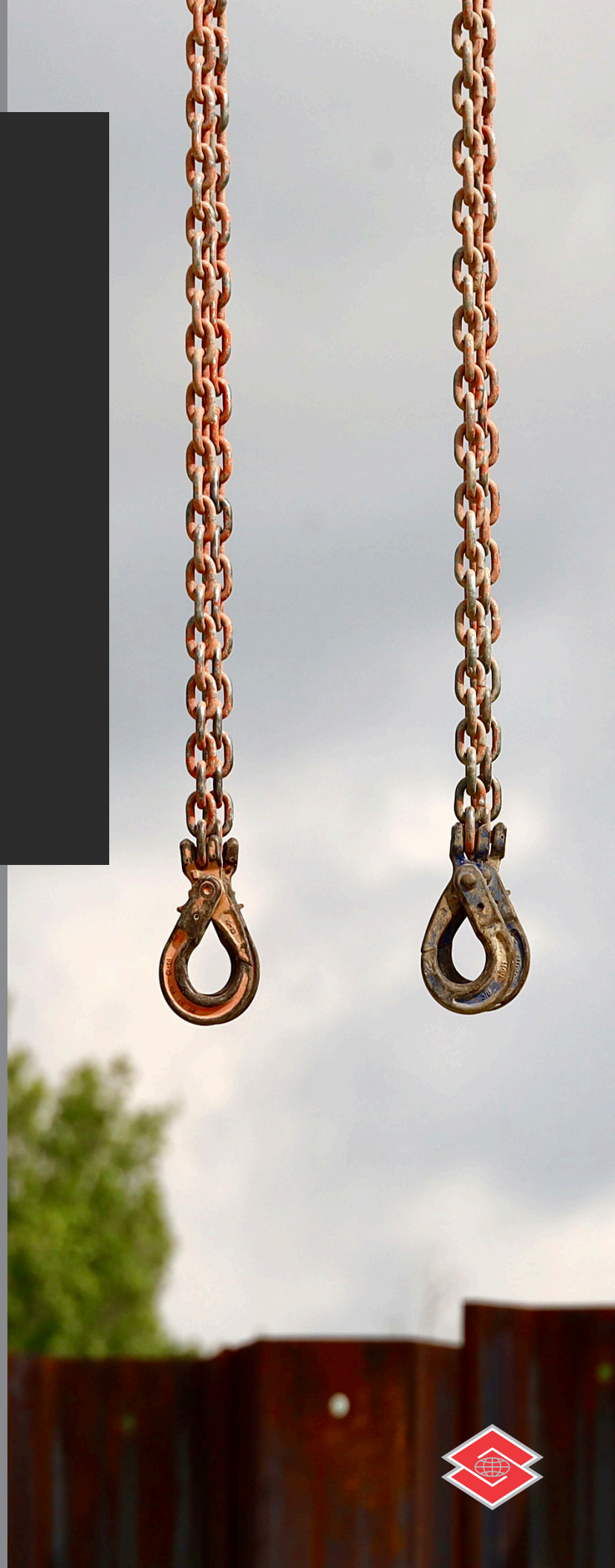
		90% GMP 1
A1 Direct Costs		$ 63,025,437
A2 Sales Tax	8.25%	$ -
A3 CMAR Construction Contingency		$ 2,443,308
A4. Allowances:		$ 3,160,708
A4.1 Construction Escalation/Tariff Allowance		$ -
A4.2 90% to 100% Reconciliation Allowance		$ 1,854,110
A4.3 Overs Quantity Overage Allowance		$ 760,000
A4.4 Dust 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**

Docusign Envelope ID: 2BDA2EE8-AFB4-4B50-8CFB-AF6CA58CB79C

3

SCHEDULE OF VALUES



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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 mutally 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.*

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4

PLANS & SPECIFICATIONS USED FOR GMP PROPOSAL

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EXHIBIT E - BIDDING/CONTRACT DOCUMENTS LIST

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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
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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
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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

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EXHIBIT E - BIDDING/CONTRACT DOCUMENTS LIST

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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 - REVISE	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

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EXHIBIT E - BIDDING/CONTRACT DOCUMENTS LIST

SUNDT

PROJECT:	PECAN CREEK WRP - HEADWORKS AND EXPANSION			
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

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EXHIBIT E - BIDDING/CONTRACT DOCUMENTS LIST

SUNDT

PROJECT:	PECAN CREEK WRP - HEADWORKS AND EXPANSION			
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

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EXHIBIT E - BIDDING/CONTRACT DOCUMENTS LIST

SUNDT

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

Docusign Envelope ID: 2BDA2EE8-AFB4-4B50-8CFB-AF6CA58CB79C

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.

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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

Docusign Envelope ID: 2BDA2EE8-AFB4-4B50-8CFB-AF6CA58CB79C

Date - 23-Oct-25

#	Activity ID	Activity Name	OD	Start	Finish
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	Overal 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 GMP1to 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

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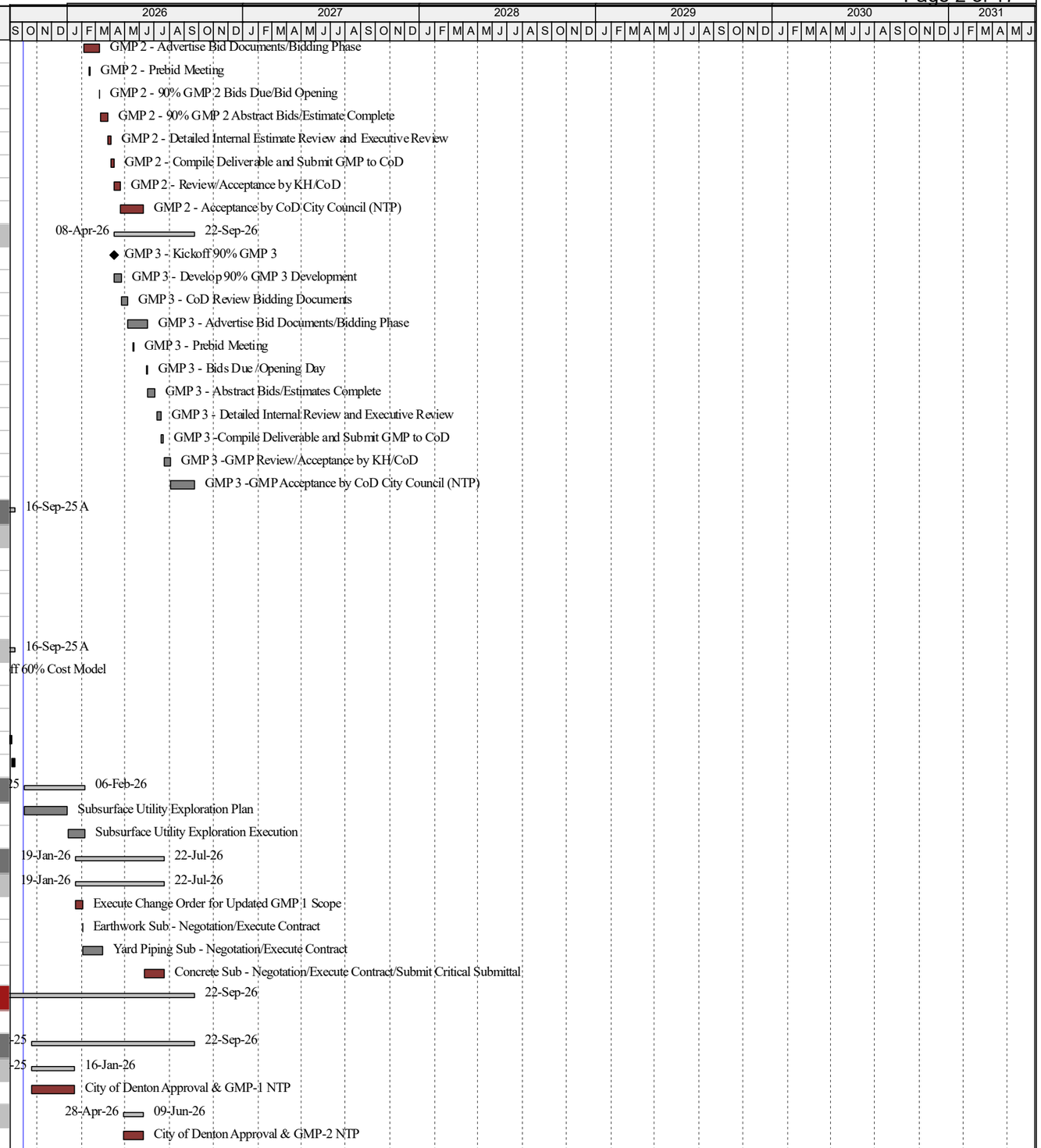
#	Activity ID	Activity Name	OD	Start	Finish
46	GMP2.PRECON.110	GMP 2 - Advertise Bid Documents/Bidding Phase	23	06-Feb-26*	10-Mar-26
47	GMP2.PRECON.210	GMP 2 - Prebid Meeting	1	17-Feb-26*	17-Feb-26
48	GMP2.PRECON.220	GMP 2 - 90% GMP 2 Bids Due/Bid Opening	1	10-Mar-26	10-Mar-26
49	GMP2.PRECON.140	GMP 2 - 90% GMP 2 Abstract Bids/Estimate Complete	12	11-Mar-26	26-Mar-26
50	GMP2.PRECON.150	GMP 2 - Detailed Internal Estimate Review and Executive Review	5	27-Mar-26	02-Apr-26
51	GMP2.PRECON.180	GMP 2 - Compile Deliverable and Submit GMP to CoD	4	03-Apr-26	08-Apr-26
52	GMP2.PRECON.190	GMP 2 - Review/Acceptance by KH/CoD	10	09-Apr-26	22-Apr-26
53	GMP2.PRECON.200	GMP 2 - Acceptance by CoD City Council (NTP)	33	23-Apr-26	09-Jun-26
54	**GMP 3 - 90% GMP DEVELOPMENT**		116	08-Apr-26	22-Sep-26
55	GMP3.PRECON.40	GMP 3 - Kickoff 90% GMP 3	0		08-Apr-26
56	GMP3.PRECON.20	GMP 3 - Develop 90% GMP 3 Development	11	09-Apr-26	23-Apr-26
57	GMP3.PRECON.120	GMP 3 - CoD Review Bidding Documents	10	24-Apr-26	07-May-26
58	GMP3.PRECON.100	GMP 3 - Advertise Bid Documents/Bidding Phase	27	08-May-26	16-Jun-26
59	GMP3.PRECON.150	GMP 3 - Prebid Meeting	1	19-May-26*	19-May-26
60	GMP3.PRECON.210	GMP 3 - Bids Due /Opening Day	1	16-Jun-26	16-Jun-26
61	GMP3.PRECON.140	GMP 3 - Abstract Bids/Estimates Complete	12	17-Jun-26	02-Jul-26
62	GMP3.PRECON.160	GMP 3 - Detailed Internal Review and Executive Review	7	06-Jul-26*	14-Jul-26
63	GMP3.PRECON.170	GMP 3 -Compile Deliverable and Submit GMP to CoD	4	15-Jul-26	20-Jul-26
64	GMP3.PRECON.190	GMP 3 -GMP Review/Acceptance by KH/CoD	10	21-Jul-26	03-Aug-26
65	GMP3.PRECON.200	GMP 3 -GMP Acceptance by CoD City Council (NTP)	35	04-Aug-26	22-Sep-26
66	COST MODEL		196	14-Jan-25 A	16-Sep-25 A
67	**COST MODEL - 30% (ENTIRE PROJECT SCOPE)**		27	14-Jan-25 A	19-Feb-25 A
68	CM30.PRECON.10	Develop 30% Cost Model	18	14-Jan-25 A	06-Feb-25 A
69	CM30.PRECON.120	30% Estimates Complete	1	07-Feb-25 A	07-Feb-25 A
70	CM30.PRECON.130	30% Internal Estimate Review/Executive Review	5	10-Feb-25 A	14-Feb-25 A
71	CM30.PRECON.160	Compile 30% Deliverable and Submit Cost Model to CoD	3	17-Feb-25 A	19-Feb-25 A
72	**COST MODEL - 60% (GMP2 - GMP3)**		78	12-Jun-25 A	16-Sep-25 A
73	CM60.PRECON.10	Kickoff 60% Cost Model	0		12-Jun-25 A
74	CM60.PRECON.120	60% Estimates Complete	5	30-Jun-25 A	08-Aug-25 A
75	CM60.PRECON.130	60% Internal Estimate Review/Executive Review	8	11-Aug-25 A	28-Aug-25 A
76	CM60.PRECON.220	Develop 60% Cost Model	10	25-Aug-25 A	08-Sep-25 A
77	CM60.PRECON.160	Compile 60% Deliverable and Submit Cost Model to CoD	6	09-Sep-25 A	16-Sep-25 A
78	SITE ACTIVITIES		85	06-Oct-25	06-Feb-26
79	A1030	Subsurface Utility Exploration Plan	60	06-Oct-25*	02-Jan-26
80	A1040	Subsurface Utility Exploration Execution	25	05-Jan-26	06-Feb-26
81	CONTRACTS		131	19-Jan-26	22-Jul-26
82	**SUBCONTRACTS**		131	19-Jan-26	22-Jul-26
83	NEW1400	Execute Change Order for Updated GMP 1 Scope	11	19-Jan-26	02-Feb-26
84	NEW1150	Earthwork Sub - Negotation/Execute Contract	1	03-Feb-26	03-Feb-26
85	NEW1160	Yard Piping Sub - Negotation/Execute Contract	30	03-Feb-26	16-Mar-26
86	NEW1170	Concrete Sub - Negotation/Execute Contract/Submit Critical Submittal	30	10-Jun-26	22-Jul-26
87	**OWNER ACTIVITIES**		417	31-Oct-24 A	22-Sep-26
88	NEW1000	CoD Scope Revised from 5MGD to 26MGD	1	31-Oct-24 A	31-Oct-24 A
89	FUNDING APPROVAL		234	20-Oct-25	22-Sep-26
90	**GMP-1**		60	20-Oct-25	16-Jan-26
91	FND.A1050	City of Denton Approval & GMP-1 NTP	60	20-Oct-25	16-Jan-26
92	**GMP-2**		30	28-Apr-26	09-Jun-26
93	FND.A1030	City of Denton Approval & GMP-2 NTP	30	28-Apr-26	09-Jun-26



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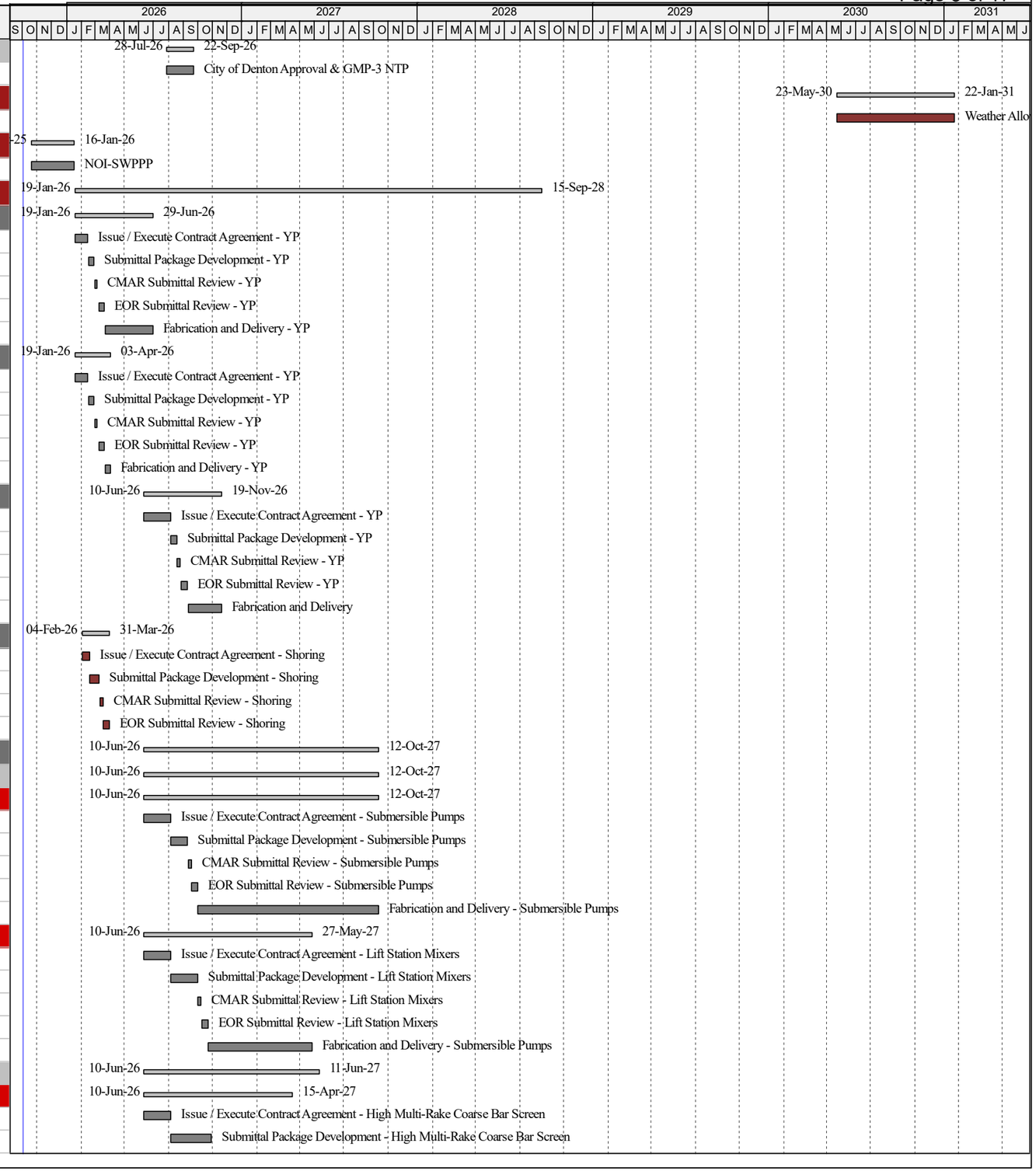
#	Activity ID	Activity Name	OD	Start	Finish
94	**GMP-3**		40	28-Jul-26	22-Sep-26
95	FND.BAL.A1030	City of Denton Approval & GMP-3 NTP	40	28-Jul-26	22-Sep-26
96	**PROJECT WEATHER ALLOWANCE**		166	23-May-30	22-Jan-31
97	A1080	Weather Allowance	166	23-May-30	22-Jan-31
98	**PERMITTING**		60	20-Oct-25	16-Jan-26
99	PMT.1000	NOI-SWPPP	60	20-Oct-25	16-Jan-26
100	**PROCUREMENT**		676	19-Jan-26	15-Sep-28
101	10 - YARD PIPE LONG LEAD - GMP 1 - 12 INCH AND LARGER		115	19-Jan-26	29-Jun-26
102	PROC.PKG1.1280	Issue / Execute Contract Agreement - YP	20	19-Jan-26	13-Feb-26
103	PROC.PKG1.1290	Submittal Package Development - YP	10	16-Feb-26	27-Feb-26
104	PROC.PKG1.1300	CMAR Submittal Review - YP	5	02-Mar-26	06-Mar-26
105	PROC.PKG1.1310	EOR Submittal Review - YP	10	09-Mar-26	20-Mar-26
106	PROC.PKG1.1340	Fabrication and Delivery - YP	70	23-Mar-26	29-Jun-26
107	10 - YARD PIPE LONG LEAD - GMP 1 - 12 INCH AND SMALLER		55	19-Jan-26	03-Apr-26
108	PROC.PKG1.2170	Issue / Execute Contract Agreement - YP	20	19-Jan-26	13-Feb-26
109	PROC.PKG1.2180	Submittal Package Development - YP	10	16-Feb-26	27-Feb-26
110	PROC.PKG1.2210	CMAR Submittal Review - YP	5	02-Mar-26	06-Mar-26
111	PROC.PKG1.2190	EOR Submittal Review - YP	10	09-Mar-26	20-Mar-26
112	PROC.PKG1.2200	Fabrication and Delivery - YP	10	23-Mar-26	03-Apr-26
113	10 - YARD PIPE LONG LEAD - GMP 2		115	10-Jun-26	19-Nov-26
114	PROC.PKG1.2120	Issue / Execute Contract Agreement - YP	40	10-Jun-26	05-Aug-26
115	PROC.PKG1.2130	Submittal Package Development - YP	10	06-Aug-26	19-Aug-26
116	PROC.PKG1.2160	CMAR Submittal Review - YP	5	20-Aug-26	26-Aug-26
117	PROC.PKG1.2140	EOR Submittal Review - YP	10	27-Aug-26	10-Sep-26
118	PROC.PKG1.2150	Fabrication and Delivery	50	11-Sep-26	19-Nov-26
119	10 - SHORING		40	04-Feb-26	31-Mar-26
120	PROC.PKG1.2220	Issue / Execute Contract Agreement - Shoring	10	04-Feb-26	17-Feb-26
121	PROC.PKG1.2230	Submittal Package Development - Shoring	15	18-Feb-26	10-Mar-26
122	PROC.PKG1.2260	CMAR Submittal Review - Shoring	5	11-Mar-26	17-Mar-26
123	PROC.PKG1.2240	EOR Submittal Review - Shoring	10	18-Mar-26	31-Mar-26
124	20 - HEADWORKS/SPLITTER BOX LONG LEAD		340	10-Jun-26	12-Oct-27
125	**20 - LIFT STATION**		340	10-Jun-26	12-Oct-27
126	**20 - Submersible Pumps**		340	10-Jun-26	12-Oct-27
127	PROC.PKG1.1570	Issue / Execute Contract Agreement - Submersible Pumps	40	10-Jun-26	05-Aug-26
128	PROC.PKG1.1580	Submittal Package Development - Submersible Pumps	25	06-Aug-26	10-Sep-26
129	PROC.PKG1.1590	CMAR Submittal Review - Submersible Pumps	5	11-Sep-26	17-Sep-26
130	PROC.PKG1.1600	EOR Submittal Review - Submersible Pumps	10	18-Sep-26	01-Oct-26
131	PROC.PKG1.1610	Fabrication and Delivery - Submersible Pumps	260	02-Oct-26	12-Oct-27
132	**20 - Lift Station Mixers**		245	10-Jun-26	27-May-27
133	PROC.PKG1.2070	Issue / Execute Contract Agreement - Lift Station Mixers	40	10-Jun-26	05-Aug-26
134	PROC.PKG1.2080	Submittal Package Development - Lift Station Mixers	40	06-Aug-26	01-Oct-26
135	PROC.PKG1.2110	CMAR Submittal Review - Lift Station Mixers	5	02-Oct-26	08-Oct-26
136	PROC.PKG1.2090	EOR Submittal Review - Lift Station Mixers	10	09-Oct-26	22-Oct-26
137	PROC.PKG1.2100	Fabrication and Delivery - Submersible Pumps	150	23-Oct-26	27-May-27
138	**20 - COURSE SCREENING**		255	10-Jun-26	11-Jun-27
139	**20 - High Multi-Rake Coarse Bar Screen**		215	10-Jun-26	15-Apr-27
140	PROC.PKG1.1520	Issue / Execute Contract Agreement - High Multi-Rake Coarse Bar Screen	40	10-Jun-26	05-Aug-26
141	PROC.PKG1.1530	Submittal Package Development - High Multi-Rake Coarse Bar Screen	60	06-Aug-26	29-Oct-26



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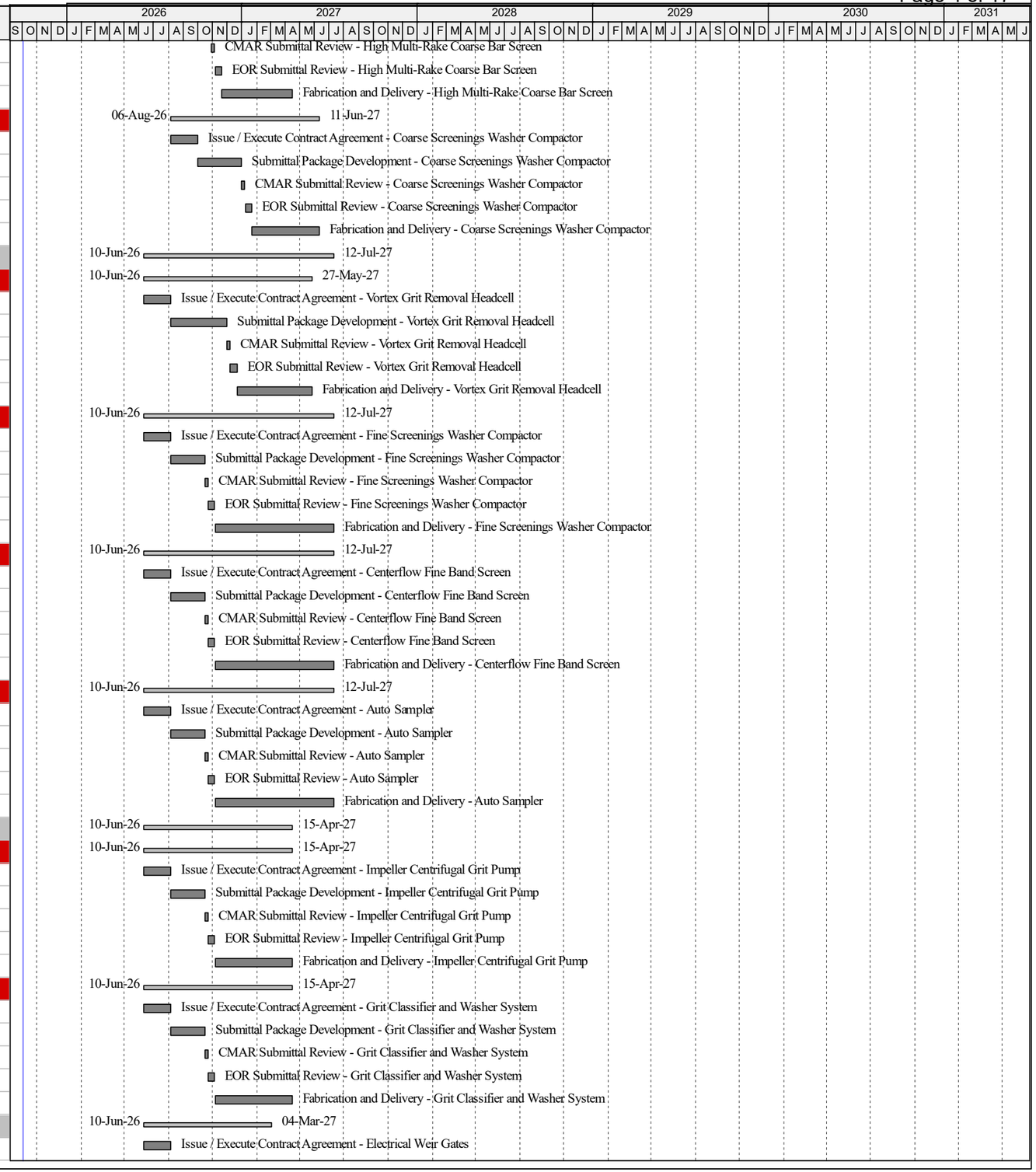
#	Activity ID	Activity Name	OD	Start	Finish
142	PROC.PKG1.1540	CMAR Submittal Review - High Multi-Rake Coarse Bar Screen	5	30-Oct-26	05-Nov-26
143	PROC.PKG1.1550	EOR Submittal Review - High Multi-Rake Coarse Bar Screen	10	06-Nov-26	19-Nov-26
144	PROC.PKG1.1560	Fabrication and Delivery - High Multi-Rake Coarse Bar Screen	100	20-Nov-26	15-Apr-27
145	**20 - Coarse Screenings Washer Compactor**		215	06-Aug-26	11-Jun-27
146	PROC.PKG1.1820	Issue / Execute Contract Agreement - Coarse Screenings Washer Compactor	40	06-Aug-26	01-Oct-26
147	PROC.PKG1.1830	Submittal Package Development - Coarse Screenings Washer Compactor	60	02-Oct-26	30-Dec-26
148	PROC.PKG1.1860	CMAR Submittal Review - Coarse Screenings Washer Compactor	5	31-Dec-26	07-Jan-27
149	PROC.PKG1.1840	EOR Submittal Review - Coarse Screenings Washer Compactor	10	08-Jan-27	21-Jan-27
150	PROC.PKG1.1850	Fabrication and Delivery - Coarse Screenings Washer Compactor	100	22-Jan-27	11-Jun-27
151	**20 - FINE SCREEN**		275	10-Jun-26	12-Jul-27
152	**20 - Vortex Grit Removal Headcell**		245	10-Jun-26	27-May-27
153	PROC.PKG1.1420	Issue / Execute Contract Agreement - Vortex Grit Removal Headcell	40	10-Jun-26	05-Aug-26
154	PROC.PKG1.1430	Submittal Package Development - Vortex Grit Removal Headcell	80	06-Aug-26	30-Nov-26
155	PROC.PKG1.1440	CMAR Submittal Review - Vortex Grit Removal Headcell	5	01-Dec-26	07-Dec-26
156	PROC.PKG1.1450	EOR Submittal Review - Vortex Grit Removal Headcell	10	08-Dec-26	21-Dec-26
157	PROC.PKG1.1460	Fabrication and Delivery - Vortex Grit Removal Headcell	110	22-Dec-26	27-May-27
158	**20 - Fine Screenings Washer Compactor**		275	10-Jun-26	12-Jul-27
159	PROC.PKG1.1470	Issue / Execute Contract Agreement - Fine Screenings Washer Compactor	40	10-Jun-26	05-Aug-26
160	PROC.PKG1.1480	Submittal Package Development - Fine Screenings Washer Compactor	50	06-Aug-26	15-Oct-26
161	PROC.PKG1.1490	CMAR Submittal Review - Fine Screenings Washer Compactor	5	16-Oct-26	22-Oct-26
162	PROC.PKG1.1500	EOR Submittal Review - Fine Screenings Washer Compactor	10	23-Oct-26	05-Nov-26
163	PROC.PKG1.1510	Fabrication and Delivery - Fine Screenings Washer Compactor	170	06-Nov-26	12-Jul-27
164	**20 - Centerflow Fine Band Screen**		275	10-Jun-26	12-Jul-27
165	PROC.PKG1.1870	Issue / Execute Contract Agreement - Centerflow Fine Band Screen	40	10-Jun-26	05-Aug-26
166	PROC.PKG1.1880	Submittal Package Development - Centerflow Fine Band Screen	50	06-Aug-26	15-Oct-26
167	PROC.PKG1.1910	CMAR Submittal Review - Centerflow Fine Band Screen	5	16-Oct-26	22-Oct-26
168	PROC.PKG1.1890	EOR Submittal Review - Centerflow Fine Band Screen	10	23-Oct-26	05-Nov-26
169	PROC.PKG1.1900	Fabrication and Delivery - Centerflow Fine Band Screen	170	06-Nov-26	12-Jul-27
170	**20 - Auto Sampler**		275	10-Jun-26	12-Jul-27
171	PROC.PKG1.1920	Issue / Execute Contract Agreement - Auto Sampler	40	10-Jun-26	05-Aug-26
172	PROC.PKG1.1930	Submittal Package Development - Auto Sampler	50	06-Aug-26	15-Oct-26
173	PROC.PKG1.1960	CMAR Submittal Review - Auto Sampler	5	16-Oct-26	22-Oct-26
174	PROC.PKG1.1940	EOR Submittal Review - Auto Sampler	10	23-Oct-26	05-Nov-26
175	PROC.PKG1.1950	Fabrication and Delivery - Auto Sampler	170	06-Nov-26	12-Jul-27
176	**20 - HEADCELL AREA**		215	10-Jun-26	15-Apr-27
177	**20 - Impeller Centrifugal Grit Pumps**		215	10-Jun-26	15-Apr-27
178	PROC.PKG1.2020	Issue / Execute Contract Agreement - Impeller Centrifugal Grit Pump	40	10-Jun-26	05-Aug-26
179	PROC.PKG1.2030	Submittal Package Development - Impeller Centrifugal Grit Pump	50	06-Aug-26	15-Oct-26
180	PROC.PKG1.2060	CMAR Submittal Review - Impeller Centrifugal Grit Pump	5	16-Oct-26	22-Oct-26
181	PROC.PKG1.2040	EOR Submittal Review - Impeller Centrifugal Grit Pump	10	23-Oct-26	05-Nov-26
182	PROC.PKG1.2050	Fabrication and Delivery - Impeller Centrifugal Grit Pump	110	06-Nov-26	15-Apr-27
183	**20 - Grit Classifier and Washer System**		215	10-Jun-26	15-Apr-27
184	PROC.PKG1.1970	Issue / Execute Contract Agreement - Grit Classifier and Washer System	40	10-Jun-26	05-Aug-26
185	PROC.PKG1.1980	Submittal Package Development - Grit Classifier and Washer System	50	06-Aug-26	15-Oct-26
186	PROC.PKG1.2010	CMAR Submittal Review - Grit Classifier and Washer System	5	16-Oct-26	22-Oct-26
187	PROC.PKG1.1990	EOR Submittal Review - Grit Classifier and Washer System	10	23-Oct-26	05-Nov-26
188	PROC.PKG1.2000	Fabrication and Delivery - Grit Classifier and Washer System	110	06-Nov-26	15-Apr-27
189	**20 - Electrical Weir Gates**		185	10-Jun-26	04-Mar-27
190	PROC.PKG1.1720	Issue / Execute Contract Agreement - Electrical Weir Gates	40	10-Jun-26	05-Aug-26



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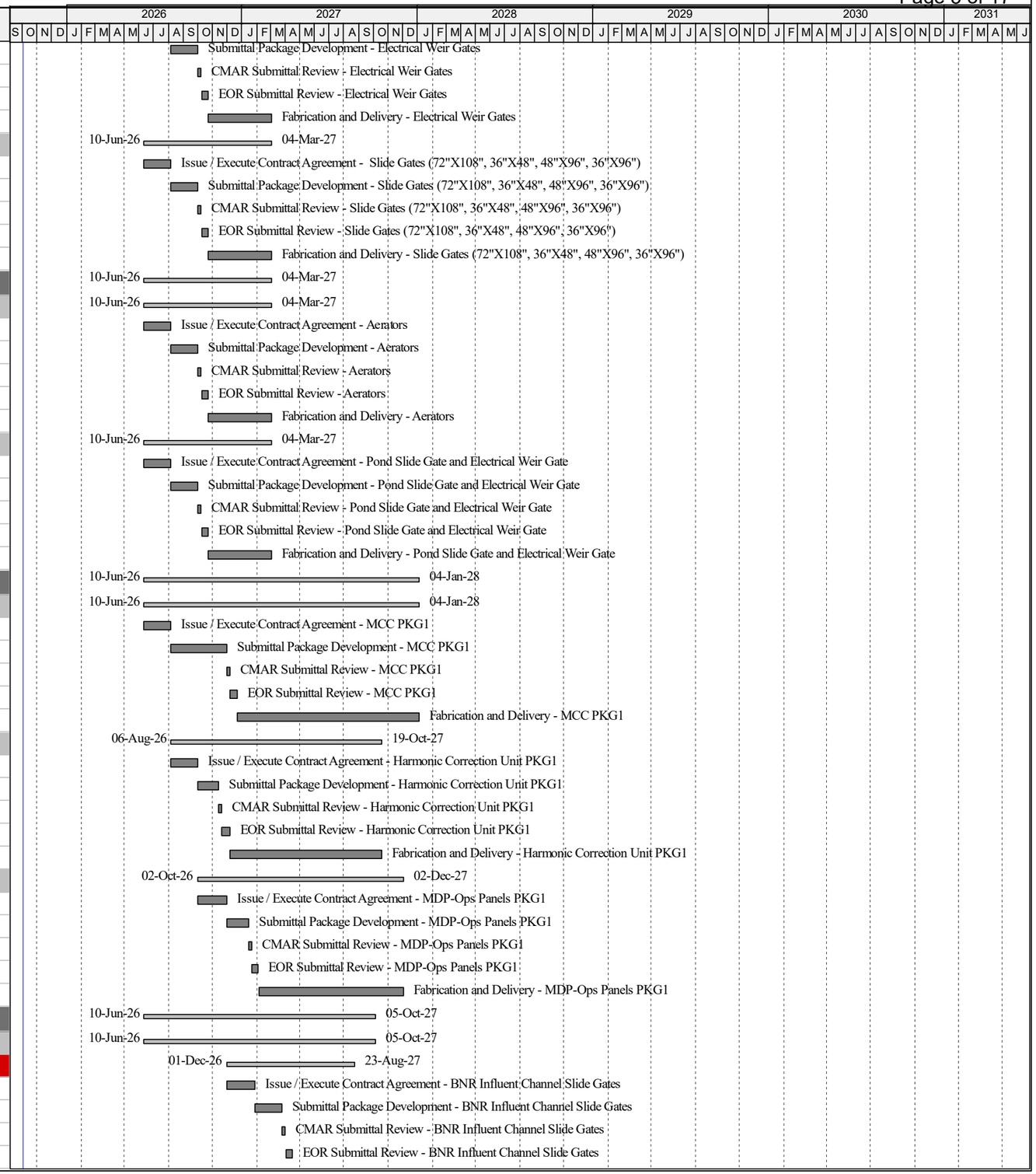
#	Activity ID	Activity Name	OD	Start	Finish
191	PROC.PKG1.1730	Submittal Package Development - Electrical Weir Gates	40	06-Aug-26	01-Oct-26
192	PROC.PKG1.1760	CMAR Submittal Review - Electrical Weir Gates	5	02-Oct-26	08-Oct-26
193	PROC.PKG1.1740	EOR Submittal Review - Electrical Weir Gates	10	09-Oct-26	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"X	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



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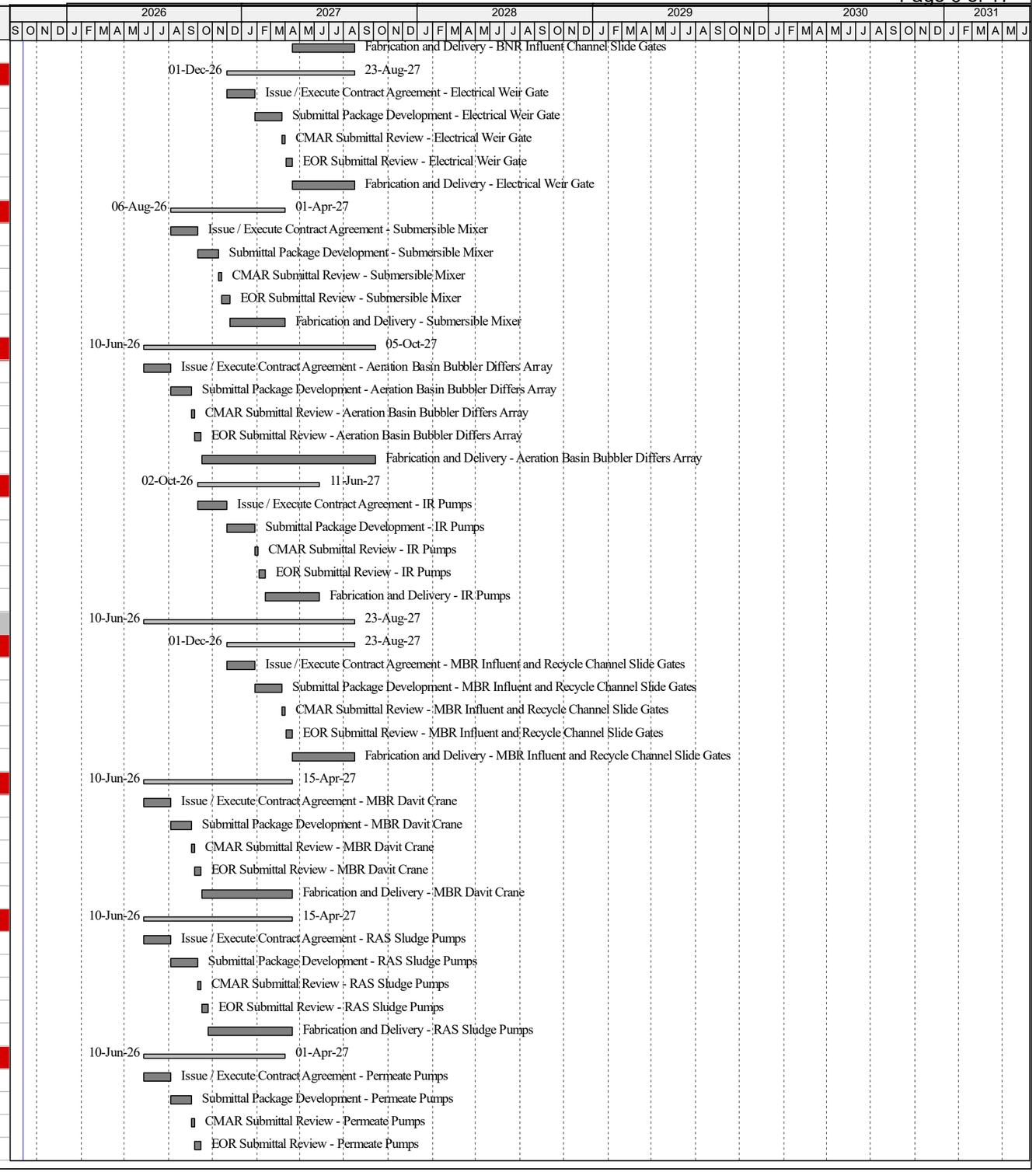
#	Activity ID	Activity Name	OD	Start	Finish
240	PROC.PKG2.3970	Fabrication and Delivery - BNR Influent Channel Slide Gates	90	16-Apr-27	23-Aug-27
241	**30 - Electrical Weir Gate**		185	01-Dec-26	23-Aug-27
242	PROC.PKG2.3990	Issue / Execute Contract Agreement - Electrical Weir Gate	40	01-Dec-26	28-Jan-27
243	PROC.PKG2.4000	Submittal Package Development - Electrical Weir Gate	40	29-Jan-27	25-Mar-27
244	PROC.PKG2.4030	CMAR Submittal Review - Electrical Weir Gate	5	26-Mar-27	01-Apr-27
245	PROC.PKG2.4010	EOR Submittal Review - Electrical Weir Gate	10	02-Apr-27	15-Apr-27
246	PROC.PKG2.4020	Fabrication and Delivery - Electrical Weir Gate	90	16-Apr-27	23-Aug-27
247	**30 - Submersible Mixer**		165	06-Aug-26	01-Apr-27
248	PROC.PKG2.2590	Issue / Execute Contract Agreement - Submersible Mixer	40	06-Aug-26	01-Oct-26
249	PROC.PKG2.2600	Submittal Package Development - Submersible Mixer	30	02-Oct-26	12-Nov-26
250	PROC.PKG2.2610	CMAR Submittal Review - Submersible Mixer	5	13-Nov-26	19-Nov-26
251	PROC.PKG2.2620	EOR Submittal Review - Submersible Mixer	10	20-Nov-26	07-Dec-26
252	PROC.PKG2.2630	Fabrication and Delivery - Submersible Mixer	80	08-Dec-26	01-Apr-27
253	**30 - Aeration Basin Bubbler Differs Array**		335	10-Jun-26	05-Oct-27
254	PROC.PKG2.2640	Issue / Execute Contract Agreement - Aeration Basin Bubbler Differs Array	40	10-Jun-26	05-Aug-26
255	PROC.PKG2.2650	Submittal Package Development - Aeration Basin Bubbler Differs Array	30	06-Aug-26	17-Sep-26
256	PROC.PKG2.2660	CMAR Submittal Review - Aeration Basin Bubbler Differs Array	5	18-Sep-26	24-Sep-26
257	PROC.PKG2.2670	EOR Submittal Review - Aeration Basin Bubbler Differs Array	10	25-Sep-26	08-Oct-26
258	PROC.PKG2.2680	Fabrication and Delivery - Aeration Basin Bubbler Differs Array	250	09-Oct-26	05-Oct-27
259	**30 - Internal Recycle (IR) Pumps**		175	02-Oct-26	11-Jun-27
260	PROC.PKG2.3190	Issue / Execute Contract Agreement - IR Pumps	40	02-Oct-26	30-Nov-26
261	PROC.PKG2.3200	Submittal Package Development - IR Pumps	40	01-Dec-26	28-Jan-27
262	PROC.PKG2.3210	CMAR Submittal Review - IR Pumps	5	29-Jan-27	04-Feb-27
263	PROC.PKG2.3220	EOR Submittal Review - IR Pumps	10	05-Feb-27	18-Feb-27
264	PROC.PKG2.3230	Fabrication and Delivery - IR Pumps	80	19-Feb-27	11-Jun-27
265	**30 - MBR LONG LEAD**		305	10-Jun-26	23-Aug-27
266	**30 - MBR Influent and Recycle Channel Slide Gate**		185	01-Dec-26	23-Aug-27
267	PROC.PKG2.2940	Issue / Execute Contract Agreement - MBR Influent and Recycle Channel Slide Gates	40	01-Dec-26	28-Jan-27
268	PROC.PKG2.2950	Submittal Package Development - MBR Influent and Recycle Channel Slide Gates	40	29-Jan-27	25-Mar-27
269	PROC.PKG2.2960	CMAR Submittal Review - MBR Influent and Recycle Channel Slide Gates	5	26-Mar-27	01-Apr-27
270	PROC.PKG2.2970	EOR Submittal Review - MBR Influent and Recycle Channel Slide Gates	10	02-Apr-27	15-Apr-27
271	PROC.PKG2.2980	Fabrication and Delivery - MBR Influent and Recycle Channel Slide Gates	90	16-Apr-27	23-Aug-27
272	**30 - MBR Davit Crane**		215	10-Jun-26	15-Apr-27
273	PROC.PKG2.2990	Issue / Execute Contract Agreement - MBR Davit Crane	40	10-Jun-26	05-Aug-26
274	PROC.PKG2.3000	Submittal Package Development - MBR Davit Crane	30	06-Aug-26	17-Sep-26
275	PROC.PKG2.3010	CMAR Submittal Review - MBR Davit Crane	5	18-Sep-26	24-Sep-26
276	PROC.PKG2.3020	EOR Submittal Review - MBR Davit Crane	10	25-Sep-26	08-Oct-26
277	PROC.PKG2.3030	Fabrication and Delivery - MBR Davit Crane	130	09-Oct-26	15-Apr-27
278	**30 - WAS/RAS Sludge Pumps**		215	10-Jun-26	15-Apr-27
279	PROC.PKG2.3140	Issue / Execute Contract Agreement - RAS Sludge Pumps	40	10-Jun-26	05-Aug-26
280	PROC.PKG2.3150	Submittal Package Development - RAS Sludge Pumps	40	06-Aug-26	01-Oct-26
281	PROC.PKG2.3160	CMAR Submittal Review - RAS Sludge Pumps	5	02-Oct-26	08-Oct-26
282	PROC.PKG2.3170	EOR Submittal Review - RAS Sludge Pumps	10	09-Oct-26	22-Oct-26
283	PROC.PKG2.3180	Fabrication and Delivery - RAS Sludge Pumps	120	23-Oct-26	15-Apr-27
284	**30 - Permeate Pumps**		205	10-Jun-26	01-Apr-27
285	PROC.PKG2.2690	Issue / Execute Contract Agreement - Permeate Pumps	40	10-Jun-26	05-Aug-26
286	PROC.PKG2.2700	Submittal Package Development - Permeate Pumps	30	06-Aug-26	17-Sep-26
287	PROC.PKG2.2710	CMAR Submittal Review - Permeate Pumps	5	18-Sep-26	24-Sep-26
288	PROC.PKG2.2720	EOR Submittal Review - Permeate Pumps	10	25-Sep-26	08-Oct-26



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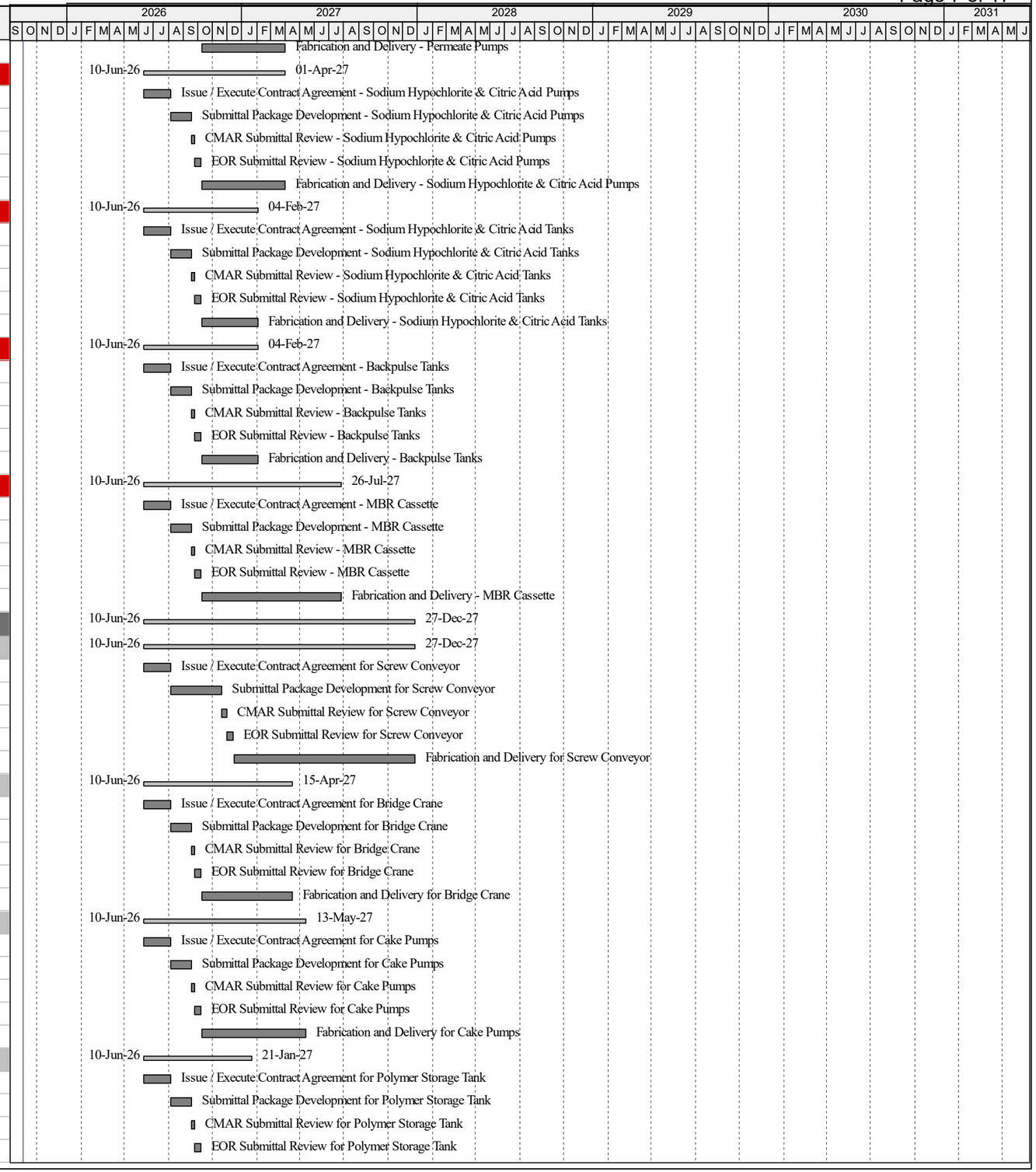
#	Activity ID	Activity Name	OD	Start	Finish
289	PROC.PKG2.2730	Fabrication and Delivery - Permeate Pumps	120	09-Oct-26	01-Apr-27
290	**30 - Sodium Hypochlorite & Citric Acid Pumps**		205	10-Jun-26	01-Apr-27
291	PROC.PKG2.3790	Issue / Execute Contract Agreement - Sodium Hypochlorite & Citric Acid Pumps	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



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#	Activity ID	Activity Name	OD	Start	Finish
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 - Anerobic 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

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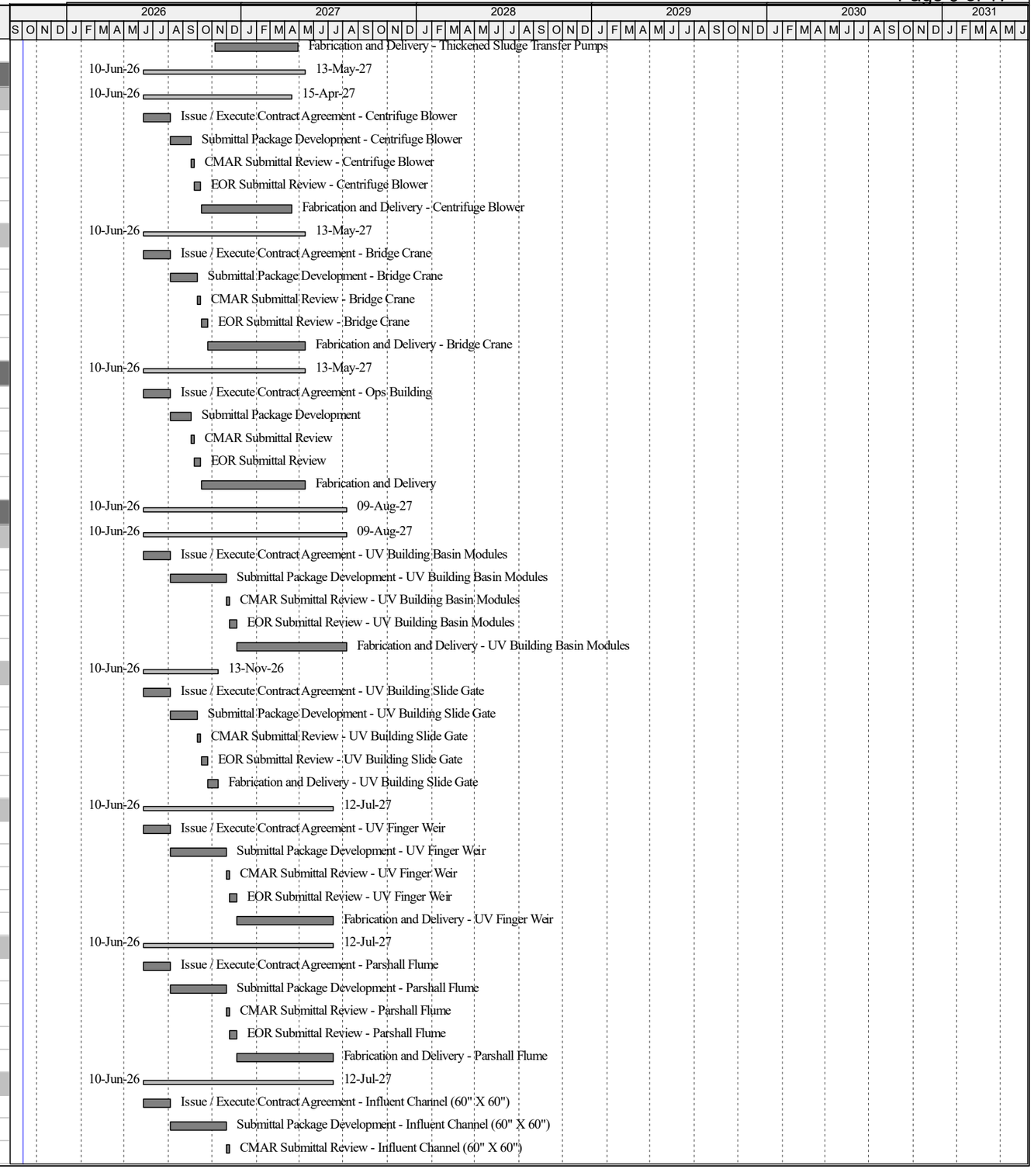
#	Activity ID	Activity Name	OD	Start	Finish
387	PROC.PKG2.3620	Fabrication and Delivery - Thickened Sludge Transfer Pumps	120	06-Nov-26	29-Apr-27
388	45 - BLOWER BUILDING - PKG 2		235	10-Jun-26	13-May-27
389	**45 - Centrifuge Blower**		215	10-Jun-26	15-Apr-27
390	PROC.PKG2.2490	Issue / Execute Contract Agreement - Centrifuge Blower	40	10-Jun-26	05-Aug-26
391	PROC.PKG2.2500	Submittal Package Development - Centrifuge Blower	30	06-Aug-26	17-Sep-26
392	PROC.PKG2.2510	CMAR Submittal Review - Centrifuge Blower	5	18-Sep-26	24-Sep-26
393	PROC.PKG2.2520	EOR Submittal Review - Centrifuge Blower	10	25-Sep-26	08-Oct-26
394	PROC.PKG2.2530	Fabrication and Delivery - Centrifuge Blower	130	09-Oct-26	15-Apr-27
395	**45 - Bridge Crane**		235	10-Jun-26	13-May-27
396	PROC.PKG2.2540	Issue / Execute Contract Agreement - Bridge Crane	40	10-Jun-26	05-Aug-26
397	PROC.PKG2.2550	Submittal Package Development - Bridge Crane	40	06-Aug-26	01-Oct-26
398	PROC.PKG2.2560	CMAR Submittal Review - Bridge Crane	5	02-Oct-26	08-Oct-26
399	PROC.PKG2.2570	EOR Submittal Review - Bridge Crane	10	09-Oct-26	22-Oct-26
400	PROC.PKG2.2580	Fabrication and Delivery - Bridge Crane	140	23-Oct-26	13-May-27
401	50 - CONTROL OPERATION BUILDING		235	10-Jun-26	13-May-27
402	PROC.PKG2.1770	Issue / Execute Contract Agreement - Ops Building	40	10-Jun-26	05-Aug-26
403	PROC.PKG2.1780	Submittal Package Development	30	06-Aug-26	17-Sep-26
404	PROC.PKG2.1790	CMAR Submittal Review	5	18-Sep-26	24-Sep-26
405	PROC.PKG2.1800	EOR Submittal Review	10	25-Sep-26	08-Oct-26
406	PROC.PKG2.1830	Fabrication and Delivery	150	09-Oct-26	13-May-27
407	55 - UV BUILDING PKG 2		295	10-Jun-26	09-Aug-27
408	**55 - UV Building Basin Modules**		295	10-Jun-26	09-Aug-27
409	PROC.PKG2.2740	Issue / Execute Contract Agreement - UV Building Basin Modules	40	10-Jun-26	05-Aug-26
410	PROC.PKG2.2750	Submittal Package Development - UV Building Basin Modules	80	06-Aug-26	30-Nov-26
411	PROC.PKG2.2760	CMAR Submittal Review - UV Building Basin Modules	5	01-Dec-26	07-Dec-26
412	PROC.PKG2.2770	EOR Submittal Review - UV Building Basin Modules	10	08-Dec-26	21-Dec-26
413	PROC.PKG2.2780	Fabrication and Delivery - UV Building Basin Modules	160	22-Dec-26	09-Aug-27
414	**55 - UV Building Slide Gate**		111	10-Jun-26	13-Nov-26
415	PROC.PKG2.2790	Issue / Execute Contract Agreement - UV Building Slide Gate	40	10-Jun-26	05-Aug-26
416	PROC.PKG2.2800	Submittal Package Development - UV Building Slide Gate	40	06-Aug-26	01-Oct-26
417	PROC.PKG2.2810	CMAR Submittal Review - UV Building Slide Gate	5	02-Oct-26	08-Oct-26
418	PROC.PKG2.2820	EOR Submittal Review - UV Building Slide Gate	10	09-Oct-26	22-Oct-26
419	PROC.PKG2.2830	Fabrication and Delivery - UV Building Slide Gate	16	23-Oct-26	13-Nov-26
420	**55 - UV Building Finger Weir**		275	10-Jun-26	12-Jul-27
421	PROC.PKG2.2840	Issue / Execute Contract Agreement - UV Finger Weir	40	10-Jun-26	05-Aug-26
422	PROC.PKG2.2850	Submittal Package Development - UV Finger Weir	80	06-Aug-26	30-Nov-26
423	PROC.PKG2.2860	CMAR Submittal Review - UV Finger Weir	5	01-Dec-26	07-Dec-26
424	PROC.PKG2.2870	EOR Submittal Review - UV Finger Weir	10	08-Dec-26	21-Dec-26
425	PROC.PKG2.2880	Fabrication and Delivery - UV Finger Weir	140	22-Dec-26	12-Jul-27
426	**55 - UV Building Parshall Flume**		275	10-Jun-26	12-Jul-27
427	PROC.PKG2.3540	Issue / Execute Contract Agreement - Parshall Flume	40	10-Jun-26	05-Aug-26
428	PROC.PKG2.3550	Submittal Package Development - Parshall Flume	80	06-Aug-26	30-Nov-26
429	PROC.PKG2.3580	CMAR Submittal Review - Parshall Flume	5	01-Dec-26	07-Dec-26
430	PROC.PKG2.3560	EOR Submittal Review - Parshall Flume	10	08-Dec-26	21-Dec-26
431	PROC.PKG2.3570	Fabrication and Delivery - Parshall Flume	140	22-Dec-26	12-Jul-27
432	**55 - UV Building Influent Channel (60" X 60")**		275	10-Jun-26	12-Jul-27
433	PROC.PKG2.3490	Issue / Execute Contract Agreement - Influent Channel (60" X 60")	40	10-Jun-26	05-Aug-26
434	PROC.PKG2.3500	Submittal Package Development - Influent Channel (60" X 60")	80	06-Aug-26	30-Nov-26
435	PROC.PKG2.3530	CMAR Submittal Review - Influent Channel (60" X 60")	5	01-Dec-26	07-Dec-26



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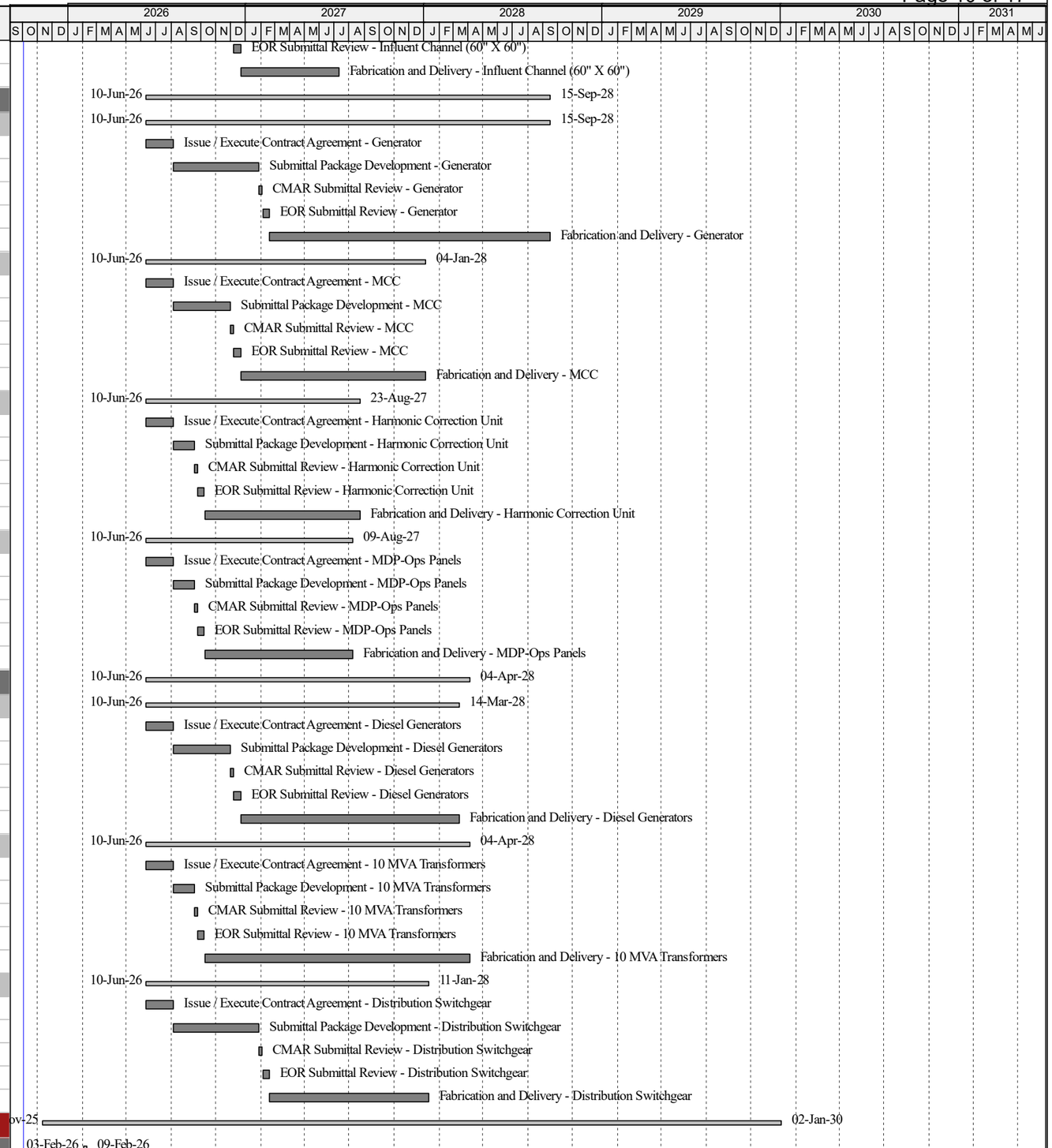
#	Activity ID	Activity Name	OD	Start	Finish
436	PROC.PKG2.3510	EOR Submittal Review - Influent Channel (60" X 60")	10	08-Dec-26	21-Dec-26
437	PROC.PKG2.3520	Fabrication and Delivery - Influent Channel (60" X 60")	140	22-Dec-26	12-Jul-27
438	ELECTRICAL LONG LEAD		575	10-Jun-26	15-Sep-28
439	**Electrical - 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



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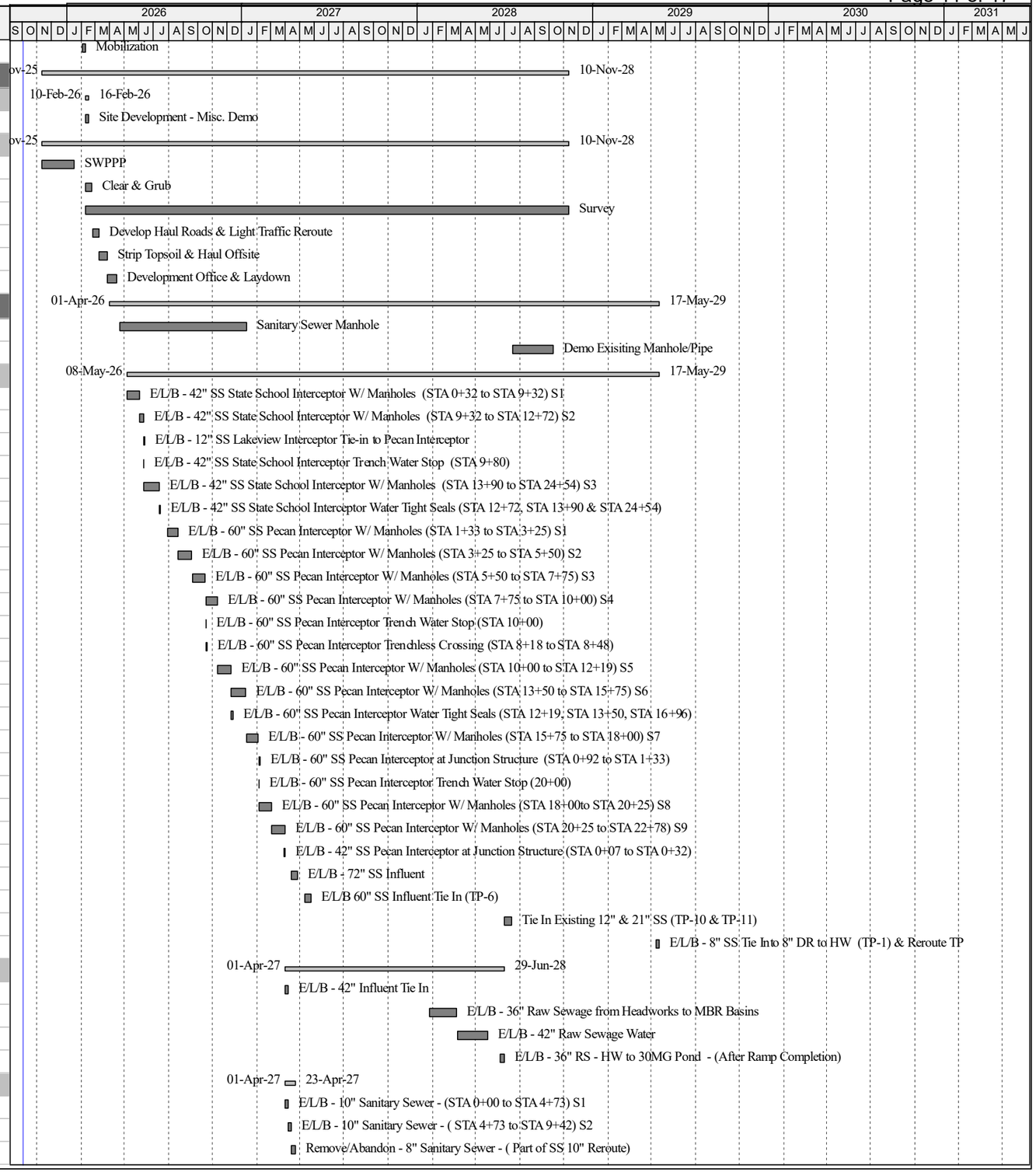
#	Activity ID	Activity Name	OD	Start	Finish
484	A1010	Mobilization	5	03-Feb-26	09-Feb-26
485	05 - SITEWORK		761	10-Nov-25	10-Nov-28
486	**DEMO**		5	10-Feb-26	16-Feb-26
487	NEW1010	Site Development - Misc. Demo	5	10-Feb-26	16-Feb-26
488	**CIVIL**		761	10-Nov-25	10-Nov-28
489	NEW1040	SWPPP	45	10-Nov-25	16-Jan-26
490	NEW1020	Clear & Grub	10	10-Feb-26	23-Feb-26
491	NEW1060	Survey	700	10-Feb-26	10-Nov-28
492	NEW1200	Develop Haul Roads & Light Traffic Reroute	10	24-Feb-26	09-Mar-26
493	NEW1180	Strip Topsoil & Haul Offsite	13	10-Mar-26	26-Mar-26
494	NEW1190	Development Office & Laydown	14	27-Mar-26	15-Apr-26
495	10 - YARD PIPING		793	01-Apr-26	17-May-29
496	1C.1290	Sanitary Sewer Manhole	180	23-Apr-26	11-Jan-27
497	1C.1090	Demo Exisiting Manhole/Pipe	61	17-Jul-28	10-Oct-28
498	**10 - YARD PIPING - SANITARY SEWER/INTERSEPTORS**		766	08-May-26	17-May-29
499	1C.1300	E/L/B - 42" SS State School Interceptor W/ Manholes (STA 0+32 to STA 9+32) S1	17	08-May-26	02-Jun-26
500	1C.1310	E/L/B - 42" SS State School Interceptor W/ Manholes (STA 9+32 to STA 12+72) S2	6	03-Jun-26	10-Jun-26
501	1C.1280	E/L/B - 12" SS Lakeview Interceptor Tie-in to Pecan Interceptor	3	10-Jun-26	12-Jun-26
502	1C.1320	E/L/B - 42" SS State School Interceptor Trench Water Stop (STA 9+80)	1	10-Jun-26	10-Jun-26
503	1C.1330	E/L/B - 42" SS State School Interceptor W/ Manholes (STA 13+90 to STA 24+54) S3	22	11-Jun-26	13-Jul-26
504	1C.1340	E/L/B - 42" SS State School Interceptor Water Tight Seals (STA 12+72, STA 13+90 &	2	14-Jul-26	15-Jul-26
505	1C.1350	E/L/B - 60" SS Pecan Interceptor W/ Manholes (STA 1+33 to STA 3+25) S1	16	30-Jul-26	20-Aug-26
506	1C.1360	E/L/B - 60" SS Pecan Interceptor W/ Manholes (STA 3+25 to STA 5+50) S2	20	21-Aug-26	18-Sep-26
507	1C.1370	E/L/B - 60" SS Pecan Interceptor W/ Manholes (STA 5+50 to STA 7+75) S3	20	21-Sep-26	16-Oct-26
508	1C.1380	E/L/B - 60" SS Pecan Interceptor W/ Manholes (STA 7+75 to STA 10+00) S4	17	19-Oct-26	10-Nov-26
509	1C.1390	E/L/B - 60" SS Pecan Interceptor Trench Water Stop (STA 10+00)	1	19-Oct-26	19-Oct-26
510	1C.1400	E/L/B - 60" SS Pecan Interceptor Trenchless Crossing (STA 8+18 to STA 8+48)	2	19-Oct-26	20-Oct-26
511	1C.1410	E/L/B - 60" SS Pecan Interceptor W/ Manholes (STA 10+00 to STA 12+19) S5	19	11-Nov-26	09-Dec-26
512	1C.1420	E/L/B - 60" SS Pecan Interceptor W/ Manholes (STA 13+50 to STA 15+75) S6	19	10-Dec-26	08-Jan-27
513	1C.1430	E/L/B - 60" SS Pecan Interceptor Water Tight Seals (STA 12+19, STA 13+50, STA 16+	3	10-Dec-26	14-Dec-26
514	1C.1440	E/L/B - 60" SS Pecan Interceptor W/ Manholes (STA 15+75 to STA 18+00) S7	19	11-Jan-27	04-Feb-27
515	1C.1450	E/L/B - 60" SS Pecan Interceptor at Junction Structure (STA 0+92 to STA 1+33)	2	05-Feb-27	08-Feb-27
516	1C.1460	E/L/B - 60" SS Pecan Interceptor Trench Water Stop (20+00)	1	05-Feb-27	05-Feb-27
517	1C.1480	E/L/B - 60" SS Pecan Interceptor W/ Manholes (STA 18+00to STA 20+25) S8	19	05-Feb-27	03-Mar-27
518	1C.1470	E/L/B - 60" SS Pecan Interceptor W/ Manholes (STA 20+25 to STA 22+78) S9	20	04-Mar-27	31-Mar-27
519	1C.1490	E/L/B - 42" SS Pecan Interceptor at Junction Structure (STA 0+07 to STA 0+32)	2	30-Mar-27	31-Mar-27
520	1C.1020	E/L/B - 72" SS Influent	10	14-Apr-27	27-Apr-27
521	1C.1030	E/L/B 60" SS Influent Tie In (TP-6)	10	11-May-27	24-May-27
522	1C.1040	Tie In Existing 12" & 21" SS (TP-10 & TP-11)	10	30-Jun-28	14-Jul-28
523	1C.1110	E/L/B - 8" SS Tie Into 8" DR to HW (TP-1) & Reroute TP	5	11-May-29	17-May-29
524	**10 - YARD PIPING - RAW SEWAGE WATER LINE (RSW)**		317	01-Apr-27	29-Jun-28
525	1C.1080	E/L/B - 42" Influent Tie In	4	01-Apr-27	06-Apr-27
526	1C.1130	E/L/B - 36" Raw Sewage from Headworks to MBR Basins	42	26-Jan-28	23-Mar-28
527	1C.1140	E/L/B - 42" Raw Sewage Water	45	24-Mar-28	25-May-28
528	A1590	E/L/B - 36" RS - HW to 30MG Pond - (After Ramp Completion)	6	22-Jun-28	29-Jun-28
529	**10 - YARD PIPING - SEWAGE WATER**		17	01-Apr-27	23-Apr-27
530	A1740	E/L/B - 10" Sanitary Sewer - (STA 0+00 to STA 4+73) S1	5	01-Apr-27	07-Apr-27
531	A1750	E/L/B - 10" Sanitary Sewer - (STA 4+73 to STA 9+42) S2	4	08-Apr-27	13-Apr-27
532	A1760	Remove/Abandon - 8" Sanitary Sewer - (Part of SS 10" Reroute)	8	14-Apr-27	23-Apr-27



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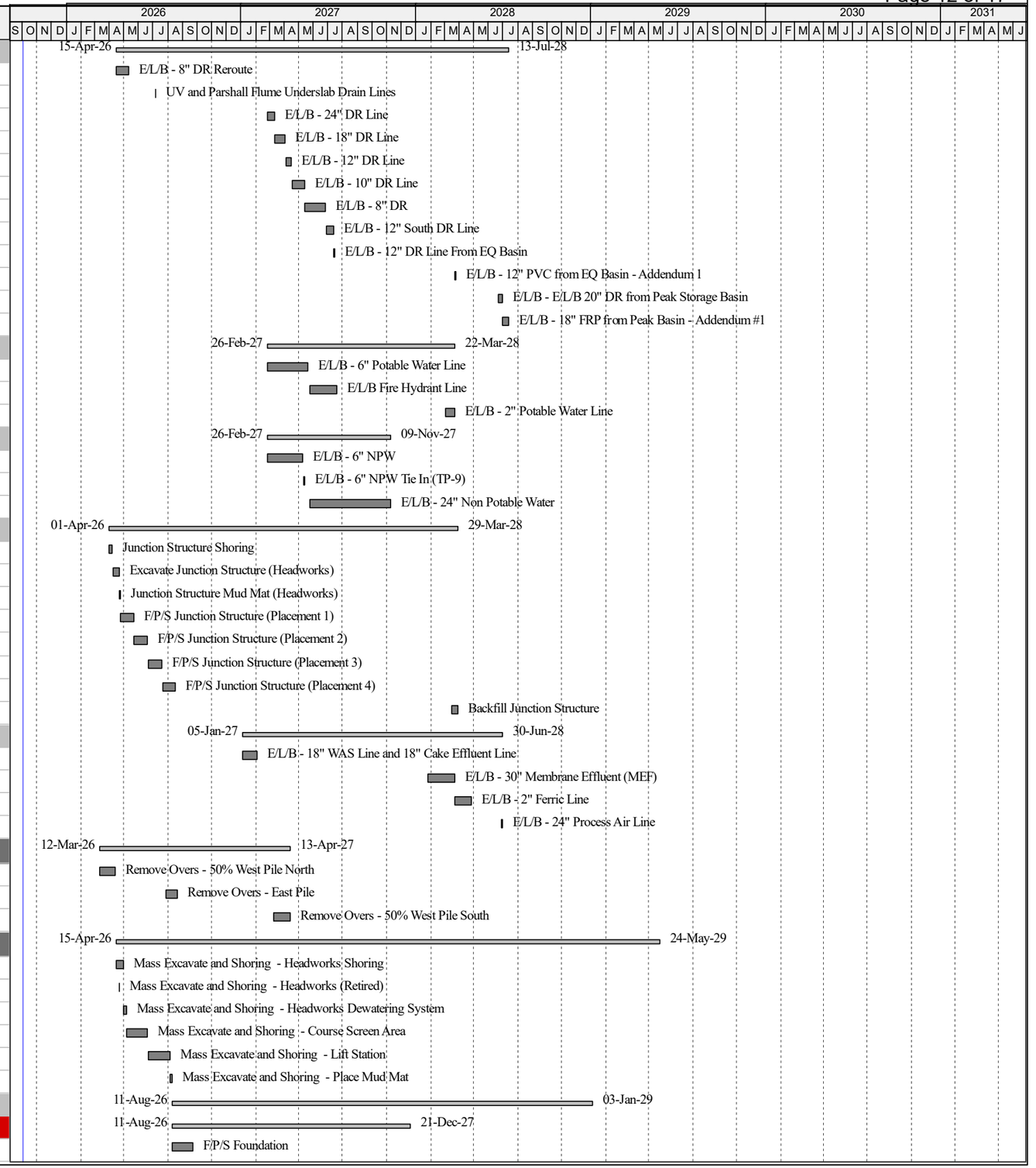
#	Activity ID	Activity Name	OD	Start	Finish
533	**10 - YARD PIPING - DR LINES**		569	15-Apr-26	13-Jul-28
534	1C.1220	E/L/B - 8" DR Reroute	20	15-Apr-26	12-May-26
535	1C.1500	UV and Parshall Flume Underslab Drain Lines	2	06-Jul-26*	07-Jul-26
536	NEW.1650	E/L/B - 24" DR Line	10	26-Feb-27	11-Mar-27
537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



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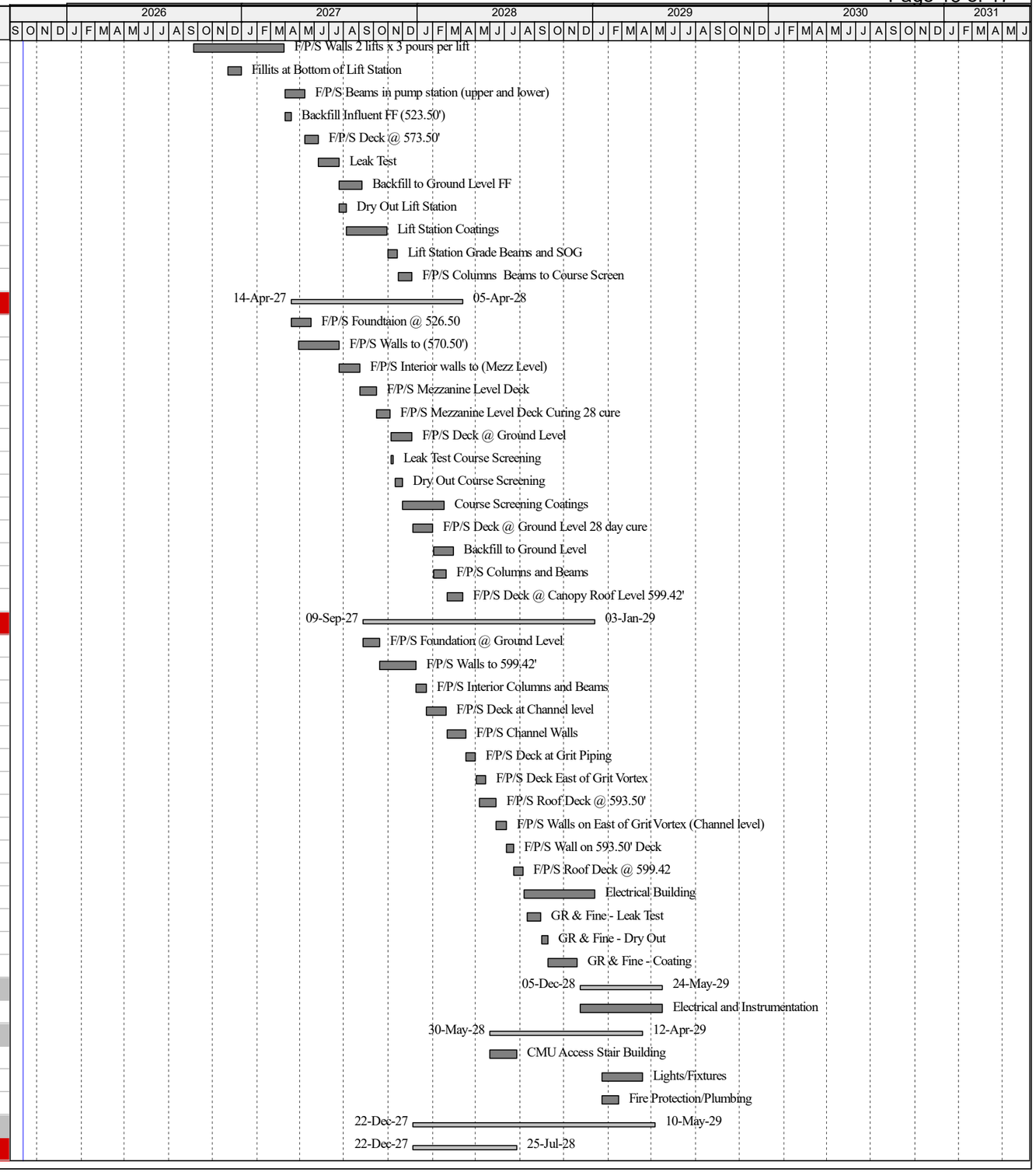
#	Activity ID	Activity Name	OD	Start	Finish
582	1A.1020	F/P/S Walls 2 lifts x 3 pours per lift	130	23-Sep-26	30-Mar-27
583	1A.1050	Fillits at Bottom of Lift Station	20	02-Dec-26	31-Dec-26
584	1A.1030	F/P/S Beams in pump station (upper and lower)	30	31-Mar-27	11-May-27
585	1A.1060	Backfill Influent FF (523.50')	10	31-Mar-27	13-Apr-27
586	1A.1040	F/P/S Deck @ 573.50'	20	12-May-27	09-Jun-27
587	A1110	Leak Test	30	10-Jun-27	22-Jul-27
588	1A.1070	Backfill to Ground Level FF	33	23-Jul-27	08-Sep-27
589	A1120	Dry Out Lift Station	10	23-Jul-27	05-Aug-27
590	A1140	Lift Station Coatings	60	06-Aug-27	29-Oct-27
591	1A.1080	Lift Station Grade Beams and SOG	15	01-Nov-27	19-Nov-27
592	1A.1090	F/P/S Columns Beams to Course Screen	20	22-Nov-27	21-Dec-27
593	**COURSE SCREENING**		248	14-Apr-27	05-Apr-28
594	1A.1100	F/P/S Foundtaion @ 526.50	30	14-Apr-27	25-May-27
595	1A.1110	F/P/S Walls to (570.50')	60	28-Apr-27	22-Jul-27
596	1A.1120	F/P/S Interior walls to (Mezz Level)	30	23-Jul-27	02-Sep-27
597	A1100	F/P/S Mezzanine Level Deck	25	03-Sep-27	08-Oct-27
598	A1090	F/P/S Mezzanine Level Deck Curing 28 cure	28	09-Oct-27	05-Nov-27
599	1A.1150	F/P/S Deck @ Ground Level	30	08-Nov-27	21-Dec-27
600	A1150	Leak Test Course Screening	5	08-Nov-27	12-Nov-27
601	A1730	Dry Out Course Screening	10	15-Nov-27	30-Nov-27
602	A1170	Course Screening Coatings	60	01-Dec-27	25-Feb-28
603	A1180	F/P/S Deck @ Ground Level 28 day cure	28	22-Dec-27	02-Feb-28
604	1A.1130	Backfill to Ground Level	30	03-Feb-28	15-Mar-28
605	1A.1160	F/P/S Columns and Beams	20	03-Feb-28	01-Mar-28
606	1A.1170	F/P/S Deck @ Canopy Roof Level 599.42'	25	02-Mar-28	05-Apr-28
607	**GRIT REMOVAL AND FINE SCREENING**		332	09-Sep-27	03-Jan-29
608	1A.1180	F/P/S Foundation @ Ground Level	25	09-Sep-27	13-Oct-27
609	1A.1190	F/P/S Walls to 599.42'	50	14-Oct-27	28-Dec-27
610	1A.1200	F/P/S Interior Columns and Beams	15	29-Dec-27	19-Jan-28
611	1A.1210	F/P/S Deck at Channel level	30	20-Jan-28	01-Mar-28
612	1A.1220	F/P/S Channel Walls	28	02-Mar-28	10-Apr-28
613	1A.1230	F/P/S Deck at Grit Piping	15	11-Apr-28	01-May-28
614	1A.1240	F/P/S Deck East of Grit Vortex	15	02-May-28	22-May-28
615	1A.1260	F/P/S Roof Deck @ 593.50'	25	08-May-28	12-Jun-28
616	1A.1250	F/P/S Walls on East of Grit Vortex (Channel level)	15	13-Jun-28	03-Jul-28
617	1A.1270	F/P/S Wall on 593.50' Deck	10	05-Jul-28	18-Jul-28
618	1A.1280	F/P/S Roof Deck @ 599.42	15	19-Jul-28	08-Aug-28
619	A1490	Electrical Building	100	09-Aug-28	03-Jan-29
620	A1210	GR & Fine - Leak Test	20	17-Aug-28	14-Sep-28
621	A1220	GR & Fine - Dry Out	10	15-Sep-28	28-Sep-28
622	A1230	GR & Fine - Coating	40	29-Sep-28	27-Nov-28
623	**ELECTRICAL, INSTRUMENTATION & CONTROLS**		120	05-Dec-28	24-May-29
624	A1550	Electrical and Instrumentation	120	05-Dec-28	24-May-29
625	**ARCHITECTURAL/BUILDING**		221	30-May-28	12-Apr-29
626	A1480	CMU Access Stair Building	40	30-May-28	25-Jul-28
627	A1510	Lights/Fixtures	60	19-Jan-29	12-Apr-29
628	A1520	Fire Protection/Plumbing	25	19-Jan-29	22-Feb-29
629	**PROCESS, EQUIP, STEEL/MISC. METALS**		351	22-Dec-27	10-May-29
630	**LIFT STATION/COURSE SCREENING**		150	22-Dec-27	25-Jul-28



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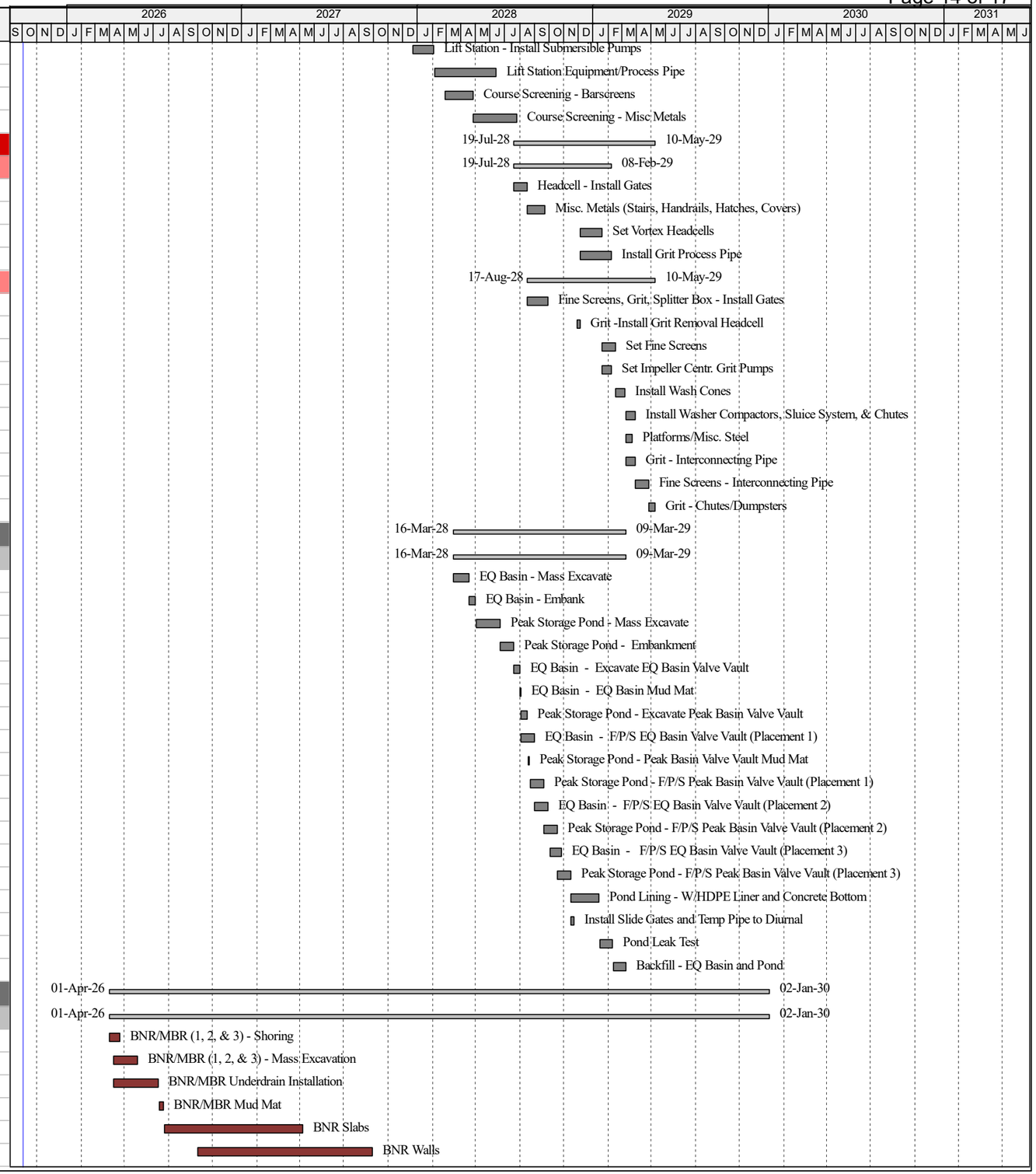
#	Activity ID	Activity Name	OD	Start	Finish
631	A1650	Lift Station - Install Submersible Pumps	30	22-Dec-27	04-Feb-28
632	A1240	Lift Station Equipment/Process Pipe	90	07-Feb-28	12-Jun-28
633	A1270	Course Screening - Barscreens	43	28-Feb-28	26-Apr-28
634	A1340	Course Screening - Misc Metals	62	27-Apr-28	25-Jul-28
635	**GRIT REMOVAL AND FINE SCREENING**		206	19-Jul-28	10-May-29
636	**HEADCELL AREA**		141	19-Jul-28	08-Feb-29
637	A1370	Headcell - Install Gates	21	19-Jul-28	16-Aug-28
638	A1380	Misc. Metals (Stairs, Handrails, Hatches, Covers)	25	17-Aug-28	21-Sep-28
639	A1350	Set Vortex Headcells	30	05-Dec-28	18-Jan-29
640	A1360	Install Grit Process Pipe	45	05-Dec-28	08-Feb-29
641	**FINE SCREEN/GRIT WASHER AREA/HW SPLITTER BOX**		185	17-Aug-28	10-May-29
642	A1410	Fine Screens, Grit, Splitter Box - Install Gates	30	17-Aug-28	28-Sep-28
643	A1620	Grit -Install Grit Removal Headcell	5	28-Nov-28	04-Dec-28
644	A1390	Set Fine Screens	20	19-Jan-29	15-Feb-29
645	A1430	Set Impeller Centr. Grit Pumps	15	19-Jan-29	08-Feb-29
646	A1440	Install Wash Cones	15	16-Feb-29	08-Mar-29
647	A1400	Install Washer Compactors, Sluice System, & Chutes	15	09-Mar-29	29-Mar-29
648	A1450	Platforms/Misc. Steel	10	09-Mar-29	22-Mar-29
649	A1460	Grit - Interconnecting Pipe	15	09-Mar-29	29-Mar-29
650	A1420	Fine Screens - Interconnecting Pipe	20	30-Mar-29	26-Apr-29
651	A1470	Grit - Chutes/Dumpsters	10	27-Apr-29	10-May-29
652	25 - EQ/PEAK STORAGE POND		249	16-Mar-28	09-Mar-29
653	**25 - STORAGE POND w/HDPE Liner**		249	16-Mar-28	09-Mar-29
654	1B.1160	EQ Basin - Mass Excavate	23	16-Mar-28	17-Apr-28
655	1B.1170	EQ Basin - Embank	10	18-Apr-28	01-May-28
656	1B.1140	Peak Storage Pond - Mass Excavate	36	02-May-28	21-Jun-28
657	1B.1180	Peak Storage Pond - Embankment	18	22-Jun-28	18-Jul-28
658	1B.1190	EQ Basin - Excavate EQ Basin Valve Vault	10	19-Jul-28	01-Aug-28
659	1B.1200	EQ Basin - EQ Basin Mud Mat	2	02-Aug-28	03-Aug-28
660	1B.1210	Peak Storage Pond - Excavate Peak Basin Valve Vault	10	04-Aug-28	17-Aug-28
661	1B.1220	EQ Basin - F/P/S EQ Basin Valve Vault (Placement 1)	20	04-Aug-28	31-Aug-28
662	1B.1250	Peak Storage Pond - Peak Basin Valve Vault Mud Mat	2	18-Aug-28	21-Aug-28
663	1B.1260	Peak Storage Pond - F/P/S Peak Basin Valve Vault (Placement 1)	20	22-Aug-28	19-Sep-28
664	1B.1230	EQ Basin - F/P/S EQ Basin Valve Vault (Placement 2)	20	01-Sep-28	29-Sep-28
665	1B.1270	Peak Storage Pond - F/P/S Peak Basin Valve Vault (Placement 2)	20	20-Sep-28	17-Oct-28
666	1B.1240	EQ Basin - F/P/S EQ Basin Valve Vault (Placement 3)	20	02-Oct-28	27-Oct-28
667	1B.1280	Peak Storage Pond - F/P/S Peak Basin Valve Vault (Placement 3)	20	18-Oct-28	14-Nov-28
668	A1710	Pond Lining - W/HDPE Liner and Concrete Bottom	38	15-Nov-28	12-Jan-29
669	A1720	Install Slide Gates and Temp Pipe to Diurnal	5	15-Nov-28	21-Nov-28
670	1B.1150	Pond Leak Test	20	15-Jan-29	09-Feb-29
671	A1700	Backfill - EQ Basin and Pond	20	12-Feb-29	09-Mar-29
672	30 - BNR/MBR		949	01-Apr-26	02-Jan-30
673	**30 - BNR/MBR-1**		949	01-Apr-26	02-Jan-30
674	NEW.1730	BNR/MBR (1, 2, & 3) - Shoring	15	01-Apr-26	21-Apr-26
675	NEW.1470	BNR/MBR (1, 2, & 3) - Mass Excavation	36	08-Apr-26	28-May-26
676	NEW.1680	BNR/MBR Underdrain Installation	64	10-Apr-26	10-Jul-26
677	NEW.1800	BNR/MBR Mud Mat	8	13-Jul-26	22-Jul-26
678	NEW.1530	BNR Slabs	200	23-Jul-26	06-May-27
679	NEW.1540	BNR Walls	250	02-Oct-26	28-Sep-27



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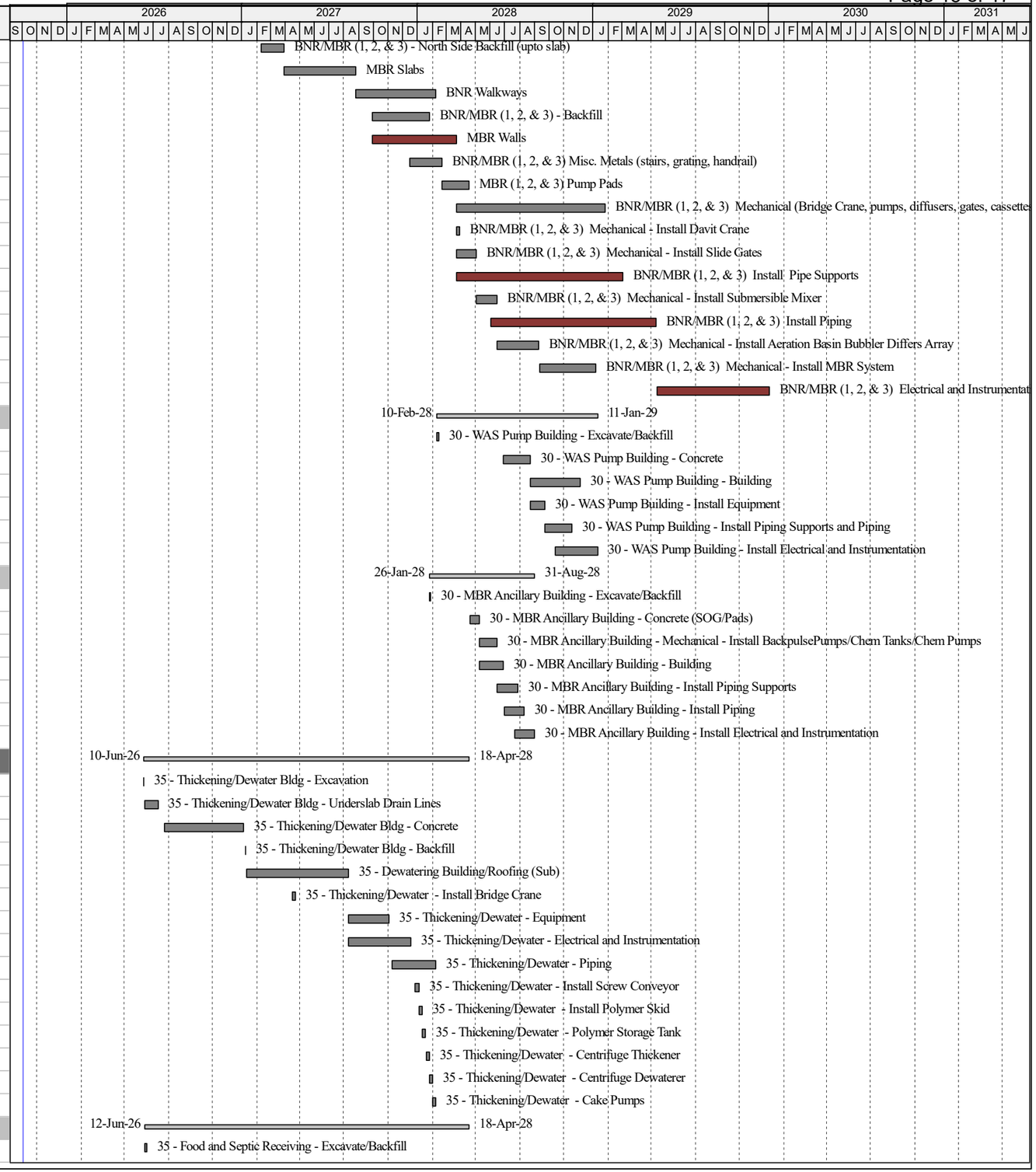
#	Activity ID	Activity Name	OD	Start	Finish
680	NEW.1710	BNR/MBR (1, 2, & 3) - North Side Backfill (upto slab)	34	10-Feb-27	29-Mar-27
681	NEW.1570	MBR Slabs	105	30-Mar-27	25-Aug-27
682	NEW.1590	BNR Walkways	112	26-Aug-27	07-Feb-28
683	NEW.1480	BNR/MBR (1, 2, & 3) - Backfill	80	29-Sep-27	25-Jan-28
684	NEW.1580	MBR Walls	120	29-Sep-27	21-Mar-28
685	2A.1290	BNR/MBR (1, 2, & 3) Misc. Metals (stairs, grating, handrail)	45	16-Dec-27	21-Feb-28
686	NEW.1600	MBR (1, 2, & 3) Pump Pads	42	21-Feb-28	18-Apr-28
687	2A.1300	BNR/MBR (1, 2, & 3) Mechanical (Bridge Crane, pumps, diffusers, gates, cassettes)	215	22-Mar-28	26-Jan-29
688	2A.1320	BNR/MBR (1, 2, & 3) Mechanical - Install Davit Crane	5	22-Mar-28	28-Mar-28
689	2A.1330	BNR/MBR (1, 2, & 3) Mechanical - Install Slide Gates	30	22-Mar-28	02-May-28
690	2A.1370	BNR/MBR (1, 2, & 3) Install Pipe Supports	240	22-Mar-28	02-Mar-29
691	2A.1340	BNR/MBR (1, 2, & 3) Mechanical - Install Submersible Mixer	30	03-May-28	14-Jun-28
692	2A.1280	BNR/MBR (1, 2, & 3) Install Piping	240	01-Jun-28	11-May-29
693	2A.1350	BNR/MBR (1, 2, & 3) Mechanical - Install Aeration Basin Bubbler Differs Array	60	15-Jun-28	08-Sep-28
694	2A.1360	BNR/MBR (1, 2, & 3) Mechanical - Install MBR System	80	11-Sep-28	05-Jan-29
695	2A.1310	BNR/MBR (1, 2, & 3) Electrical and Instrumentation	160	14-May-29	02-Jan-30
696	**30 - WAS PUMP BUILDING**		233	10-Feb-28	11-Jan-29
697	NEW1270	30 - WAS Pump Building - Excavate/Backfill	3	10-Feb-28	14-Feb-28
698	NEW1280	30 - WAS Pump Building - Concrete	40	28-Jun-28	23-Aug-28
699	NEW1290	30 - WAS Pump Building - Building	70	24-Aug-28	04-Dec-28
700	NEW1310	30 - WAS Pump Building - Install Equipment	20	24-Aug-28	21-Sep-28
701	NEW1300	30 - WAS Pump Building - Install Piping Supports and Piping	40	22-Sep-28	16-Nov-28
702	NEW1320	30 - WAS Pump Building - Install Electrical and Instrumentation	60	13-Oct-28	11-Jan-29
703	**30 - MBR ANCILLARY BUILDING**		155	26-Jan-28	31-Aug-28
704	NEW1210	30 - MBR Ancillary Building - Excavate/Backfill	2	26-Jan-28	27-Jan-28
705	NEW1220	30 - MBR Ancillary Building - Concrete (SOG/Pads)	15	19-Apr-28	09-May-28
706	NEW1230	30 - MBR Ancillary Building - Mechanical - Install BackpulsePumps/Chem Tanks/Cher	25	10-May-28	14-Jun-28
707	NEW1240	30 - MBR Ancillary Building - Building	35	10-May-28	28-Jun-28
708	NEW1250	30 - MBR Ancillary Building - Install Piping Supports	30	15-Jun-28	27-Jul-28
709	NEW1260	30 - MBR Ancillary Building - Install Piping	30	29-Jun-28	10-Aug-28
710	NEW1330	30 - MBR Ancillary Building - Install Electrical and Instrumentation	30	21-Jul-28	31-Aug-28
711	35 - THICKENING DEWATERING		470	10-Jun-26	18-Apr-28
712	NEW.1050	35 - Thickening/Dewater Bldg - Excavation	2	10-Jun-26	11-Jun-26
713	NEW.1740	35 - Thickening/Dewater Bldg - Underslab Drain Lines	20	12-Jun-26	10-Jul-26
714	NEW.1140	35 - Thickening/Dewater Bldg - Concrete	112	23-Jul-26	04-Jan-27
715	NEW.1100	35 - Thickening/Dewater Bldg - Backfill	1	08-Jan-27	08-Jan-27
716	2B.1000	35 - Dewatering Building/Roofing (Sub)	150	11-Jan-27	10-Aug-27
717	2B.1070	35 - Thickening/Dewater - Install Bridge Crane	5	16-Apr-27	22-Apr-27
718	2B.1040	35 - Thickening/Dewater - Equipment	60	11-Aug-27	03-Nov-27
719	2B.1050	35 - Thickening/Dewater - Electrical and Instrumentation	90	11-Aug-27	17-Dec-27
720	2B.1030	35 - Thickening/Dewater - Piping	60	10-Nov-27	08-Feb-28
721	2B.1060	35 - Thickening/Dewater - Install Screw Conveyor	5	28-Dec-27	04-Jan-28
722	2B.1080	35 - Thickening/Dewater - Install Polymer Skid	5	05-Jan-28	11-Jan-28
723	2B.1090	35 - Thickening/Dewater - Polymer Storage Tank	5	12-Jan-28	18-Jan-28
724	2B.1100	35 - Thickening/Dewater - Centrifuge Thickener	5	19-Jan-28	25-Jan-28
725	2B.1110	35 - Thickening/Dewater - Centrifuge Dewaterer	5	26-Jan-28	01-Feb-28
726	2B.1120	35 - Thickening/Dewater - Cake Pumps	5	02-Feb-28	08-Feb-28
727	**35 - FOOD AND SEPCTIC RECEIVING**		468	12-Jun-26	18-Apr-28
728	NEW1340	35 - Food and Septic Receiving - Excavate/Backfill	4	12-Jun-26	17-Jun-26



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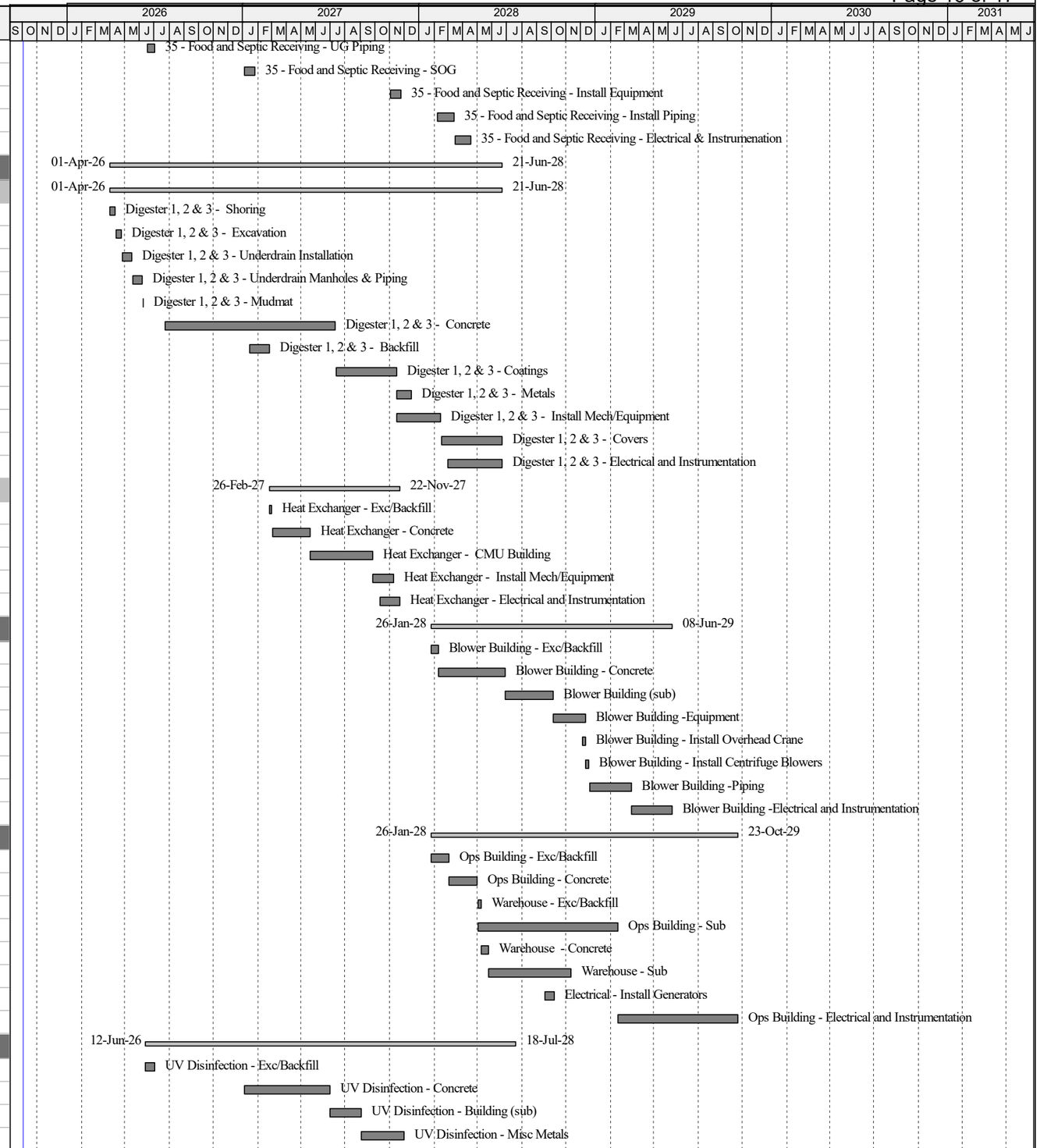
#	Activity ID	Activity Name	OD	Start	Finish
729	NEW1390	35 - Food and Septic Receiving - UG Piping	10	18-Jun-26	01-Jul-26
730	NEW1350	35 - Food and Septic Receiving - SOG	15	05-Jan-27	25-Jan-27
731	NEW1360	35 - Food and Septic Receiving - Install Equipment	15	04-Nov-27	24-Nov-27
732	NEW1370	35 - Food and Septic Receiving - Install Piping	25	09-Feb-28	14-Mar-28
733	NEW1380	35 - Food and Septic Receiving - Electrical & Instrumenation	25	15-Mar-28	18-Apr-28
734	40 - DIGESTERS/HEAT EXCHANGER BLDG		564	01-Apr-26	21-Jun-28
735	**40 - ANAEROBIC DIGESTERS**		564	01-Apr-26	21-Jun-28
736	NEW.1750	Digester 1, 2 & 3 - Shoring	8	01-Apr-26	10-Apr-26
737	NEW.1010	Digester 1, 2 & 3 - Excavation	10	13-Apr-26	24-Apr-26
738	NEW.1700	Digester 1, 2 & 3 - Underdrain Installation	15	27-Apr-26	15-May-26
739	NEW.1760	Digester 1, 2 & 3 - Underdrain Manholes & Piping	14	18-May-26	05-Jun-26
740	NEW.1770	Digester 1, 2 & 3 - Mudmat	2	08-Jun-26	09-Jun-26
741	NEW.1690	Digester 1, 2 & 3 - Concrete	245	23-Jul-26	12-Jul-27
742	NEW.1110	Digester 1, 2 & 3 - Backfill	30	15-Jan-27	25-Feb-27
743	2C.1050	Digester 1, 2 & 3 - Coatings	90	13-Jul-27	16-Nov-27
744	2C.1040	Digester 1, 2 & 3 - Metals	20	17-Nov-27	16-Dec-27
745	2C.1090	Digester 1, 2 & 3 - Install Mech/Equipment	60	17-Nov-27	15-Feb-28
746	2C.1060	Digester 1, 2 & 3 - Covers	90	16-Feb-28	21-Jun-28
747	2C.1100	Digester 1, 2 & 3 - Electrical and Instrumentation	80	01-Mar-28	21-Jun-28
748	**40 - HEAT EXCHANGER BLDG**		189	26-Feb-27	22-Nov-27
749	NEW.1070	Heat Exchanger - Exc/Backfill	3	26-Feb-27	02-Mar-27
750	NEW.1150	Heat Exchanger - Concrete	56	03-Mar-27	19-May-27
751	2C.1080	Heat Exchanger - CMU Building	90	20-May-27	27-Sep-27
752	2C.1110	Heat Exchanger - Install Mech/Equipment	30	28-Sep-27	08-Nov-27
753	2C.1070	Heat Exchanger - Electrical and Instrumentation	30	12-Oct-27	22-Nov-27
754	45 - BLOWER BLDG		349	26-Jan-28	08-Jun-29
755	NEW.1060	Blower Building - Exc/Backfill	11	26-Jan-28	09-Feb-28
756	NEW.1160	Blower Building - Concrete	98	10-Feb-28	27-Jun-28
757	2D.1030	Blower Building (sub)	70	28-Jun-28	05-Oct-28
758	2D.1000	Blower Building -Equipment	45	06-Oct-28	11-Dec-28
759	2D.1060	Blower Building - Install Overhead Crane	5	05-Dec-28	11-Dec-28
760	2D.1070	Blower Building - Install Centrifuge Blowers	5	12-Dec-28	18-Dec-28
761	2D.1040	Blower Building -Piping	60	19-Dec-28	15-Mar-29
762	2D.1050	Blower Building -Electrical and Instrumentation	60	16-Mar-29	08-Jun-29
763	50 - CONTROL OPERATIONS BLDG		444	26-Jan-28	23-Oct-29
764	NEW.1090	Ops Building - Exc/Backfill	27	26-Jan-28	02-Mar-28
765	NEW.1170	Ops Building - Concrete	42	03-Mar-28	01-May-28
766	NEW.1030	Warehouse - Exc/Backfill	6	02-May-28	09-May-28
767	NEW.1410	Ops Building - Sub	200	02-May-28	15-Feb-29
768	NEW.1210	Warehouse - Concrete	10	10-May-28	23-May-28
769	NEW.1420	Warehouse - Sub	120	24-May-28	10-Nov-28
770	NEW.1670	Electrical - Install Generators	15	18-Sep-28	06-Oct-28
771	NEW.1560	Ops Building - Electrical and Instrumentation	175	16-Feb-29	23-Oct-29
772	55 - UV DISINFECTION		531	12-Jun-26	18-Jul-28
773	NEW.1020	UV Disinfection - Exc/Backfill	15	12-Jun-26	02-Jul-26
774	NEW.1180	UV Disinfection - Concrete	126	05-Jan-27	30-Jun-27
775	2F.1030	UV Disinfection - Building (sub)	45	01-Jul-27	02-Sep-27
776	NEW.1430	UV Disinfection - Misc Metals	60	03-Sep-27	30-Nov-27



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777	2F.1050	UV Disinfection - Equipment	80	01-Dec-27	24-Mar-28
778	2F.1070	UV Disinfection - Set UV Building Slide Gate	5	20-Mar-28	24-Mar-28
779	2F.1080	UV Disinfection -Set UV Basin Modules	5	27-Mar-28	31-Mar-28
780	2F.1090	UV Disinfection -Set UV Building Finger Weir	5	03-Apr-28	07-Apr-28
781	2F.1040	UV Disinfection - Piping	60	10-Apr-28	03-Jul-28
782	2F.1060	Electrical and Instrumentation	60	24-Apr-28	18-Jul-28
783	NPW SYSTEM		496	06-Jul-26	19-Jun-28
784	NEW.1780	NPW System - Exc/Backfill	3	06-Jul-26	08-Jul-26
785	NEW.1790	NPW System - Concrete	20	01-Jul-27	29-Jul-27
786	2F.1110	NPW System - Equipment	30	27-Mar-28	05-May-28
787	2F.1120	NPW System - Piping	30	24-Apr-28	05-Jun-28
788	2F.1130	NPW System - Electrical and Instrumentation	30	08-May-28	19-Jun-28
789	60 - ELECTRICAL MEDIUM VOLTAGE/BACKUP POWER		191	13-Jul-27	12-Apr-28
790	NEW1070	Electrical Medium Voltage - Excavate/Backfill	13	13-Jul-27	29-Jul-27
791	NEW1080	Electrical Medium Voltage - Concrete	7	30-Jul-27	09-Aug-27
792	NEW1090	Electrical Medium Voltage - Precast	5	10-Aug-27	16-Aug-27
793	NEW1130	Electrical Medium Voltage - Architectural (Roofing, HVAC, Fire, Doors)	30	17-Aug-27	28-Sep-27
794	NEW1140	Electrical Medium Voltage - Electrical and I&C	30	02-Mar-28	12-Apr-28
795	NEW1100	Electrical Medium Voltage - Set MVA Transformers	2	05-Apr-28	06-Apr-28
796	NEW1110	Electrical Medium Voltage - Set Switchgear	2	07-Apr-28	10-Apr-28
797	NEW1120	Electrical Medium Voltage - Set Diesel Generators	2	11-Apr-28	12-Apr-28
798	SITE IMPROVEMENT		205	10-May-28	02-Mar-29
799	NEW.1450	Sitewide Lighting	90	10-May-28	15-Sep-28
800	NEW.1460	Sitewide Security	90	10-May-28	15-Sep-28
801	NEW.1440	Sitewide Paving and Parking	115	18-Sep-28	02-Mar-29
802	START UP / COMMISSIONING		121	03-Jan-30	21-Jun-30
803	START.1010	Start-up and Commissioning	100	03-Jan-30	22-May-30
804	START.1020	System Startup	30	23-May-30	21-Jun-30
805	PUNCH LIST		26	23-Jan-31	27-Feb-31
806	FINAL.1000	Close out	26	23-Jan-31	27-Feb-31

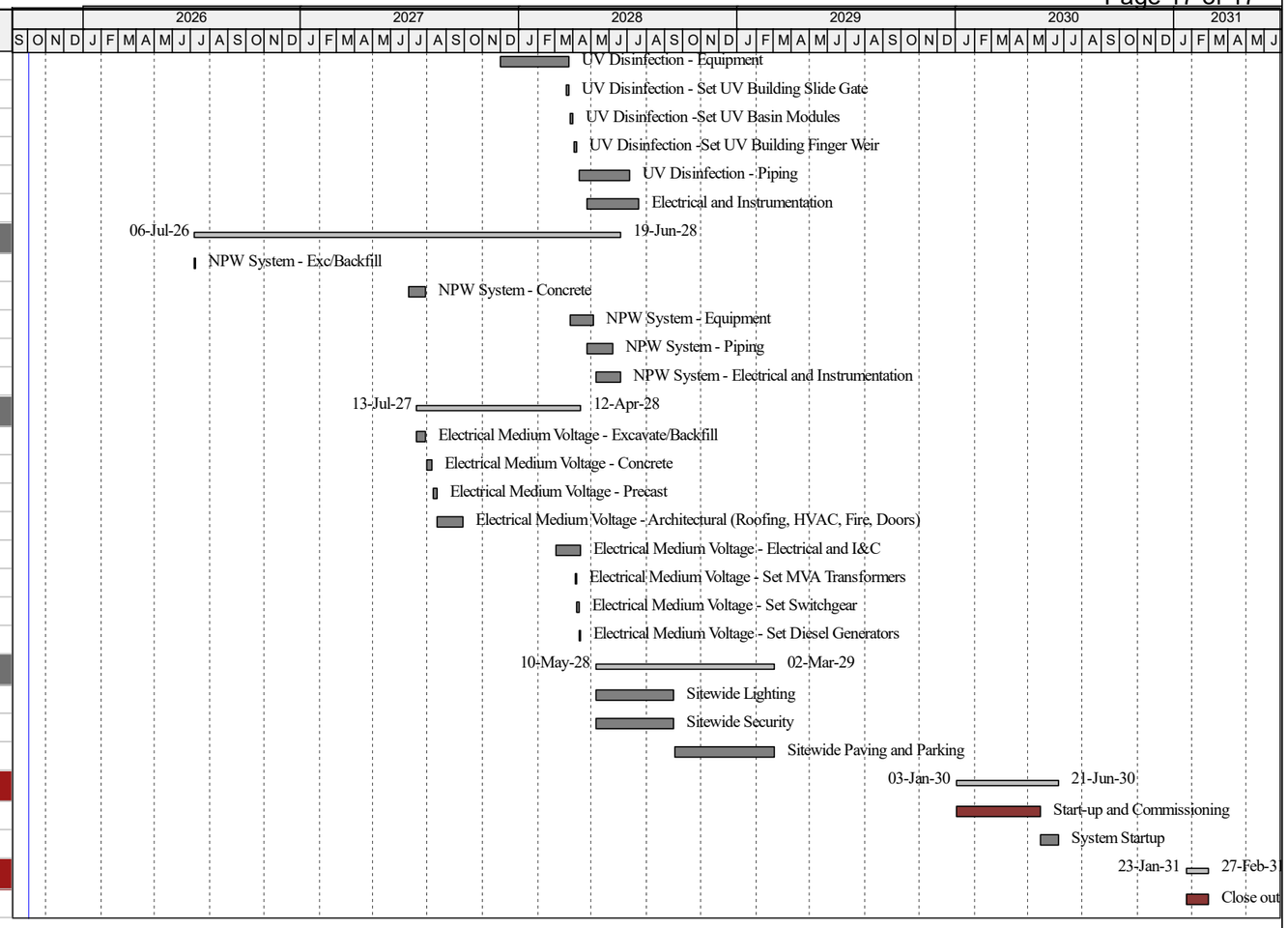

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EXHIBIT C – TECHNICAL SPECIFICATIONS

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.

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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

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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;

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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

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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

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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

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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.

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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.

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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.

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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

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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

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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

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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;

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.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

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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

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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

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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

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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.

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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

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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**

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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

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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.

Article 5. SUBCONTRACTORS

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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

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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.

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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

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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

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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

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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.

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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

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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.

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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.l;

.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

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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

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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

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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

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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

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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:

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.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

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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

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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;

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.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.

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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.

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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.

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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.

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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

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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

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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-

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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.

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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.

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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.

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i. If prior to the date of Substantial Completion the CM@Risk, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the CM@Risk shall cause such item to be restored to "like new" condition at no expense to the City. In addition, the CM@Risk shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the CM@Risk, a Subcontractor, a Sub-subcontractor, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable or for which the CM@Risk is otherwise responsible.

b. After Substantial Completion

i. In addition to the CM@Risk's obligations under Exhibit V, if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.a, or by terms of any applicable special warranty required by the Contract Documents, or within such longer period of time as may be prescribed by law, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the CM@Risk shall correct it promptly after receipt of notice from the City to do so, unless the City has previously given the CM@Risk a written acceptance of such condition. The City shall give such notice promptly after discovery of the condition. If the condition is reasonably discoverable, during the two-year period for correction of Work, and the City fails to notify the CM@Risk and give the CM@Risk an opportunity to make the correction, the City waives the rights to require correction by the CM@Risk and to make a claim for breach of warranty. If the CM@Risk fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the City or Design Professional, the City may correct it in accordance with Section 2.13, and charge the reasonable costs to the CM@Risk.

ii. The two-year period for correction of Work shall also be extended by the period of time between Substantial Completion and the actual completion of the corrective work performed by the CM@Risk pursuant to this Section 12.2, but only with respect to the corrected portions of the Work.

iii. Omitted.

c. Omitted.

d. The CM@Risk shall bear the cost of correcting destroyed or damaged construction of the City or Separate Contractors, whether completed or partially completed, caused by the CM@Risk's correction or removal of Work that is not in accordance with the requirements of the Contract Documents. These costs specifically include, but are not limited to such additional supervision, material, labor, equipment rental charges, home office overhead, and other expenditures necessitated to rectify the non-complying conditions, protect adjacent Work, and restore Work by the CM@Risk and others necessarily damaged in the course of rectifying the non-complying conditions.

e. Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the CM@Risk has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.b relates only to the

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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 Contact 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

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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

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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-

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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.

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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.

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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.

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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.l 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.

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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

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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.

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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		

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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

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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

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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)).

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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.

Docusign Envelope ID: 2BDA2EE8-AFB4-4B50-8CFB-AF6CA58CB79C

?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:

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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

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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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Docusign Envelope ID: 2BDA2EE8-AFB4-4B50-8CFB-AF6CA58CB79C

"General Decision Number: TX20260016 01/02/2026

Superseded General Decision Number: TX20250016

State: Texas

Construction Type: Heavy

County: Denton County in Texas.

Heavy Construction, Including Treatment Plants (Does not include water/sewer lines)

Modification Number	Publication Date
0	01/02/2026

ASBE0021-003 06/01/2025

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Includes application of all insulating materials, protective coverings, coatings, and finishings to all types of mechanical systems)	$ 33.23	7.52

ELEC0020-004 06/01/2025

	Rates	Fringes
Electricians:		
Cable Splicer	$ 29.81	8.84
Electrician	$ 39.75	11.67

ELEC0220-001 06/02/2024

	Rates	Fringes
Line Construction:		
CABLE SPLICERS	$ 17.12	14.5%+3.75
EQUIPMENT OPERATORS	$ 25.83	20.50%+7.75
GROUNDMAN	$ 19.28	4.5%+7.80
LINEMAN	$ 41.31	20.5%+7.25
TRUCK DRIVER	$ 23.14	9.5%+7.25

ENGI0178-001 06/01/2020

	Rates	Fringes
Cranes:		
Hydraulic Crane (35 ton & under)	$ 32.35	13.10
Hydraulic over 35 tons,Derricks, Overhead Gentry,Stiffleg,Tower,etc., and Cranes with Piledriving or Caisson attachements	$ 32.60	13.10

IRON0263-010 06/01/2025

Docusign Envelope ID: 2BDA2EE8-AFB4-4B50-8CFB-AF6CA58CB79C

	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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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.

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WAGE DETERMINATION APPEALS PROCESS

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Wage and Hour Division
U.S. Department of Labor
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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.

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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.

Docusign Envelope ID: 2BDA2EE8-AFB4-4B50-8CFB-AF6CA58CB79C

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;

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.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

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.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.

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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.

X2.1.2 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.

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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

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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.

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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

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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.

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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.

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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 estimateincluded 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.

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

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TWDB-0550
Rev. 12/2025

TEXAS WATER DEVELOPMENT BOARD

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.

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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 Engineer[1].

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).

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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.

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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.

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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.

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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.

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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.**

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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.

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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)):

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- 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.

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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.

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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.

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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.

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(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

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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.

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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

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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).

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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

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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.

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All questions regarding Davis-Bacon guidance can be directed to: U.S. Department of Labor Wage and Hour Division1-866-4USWAGE (1-866-487-9243), TTY: 1-877-889-5627, Monday-Friday 8 a.m. to 8 p.m. Eastern Time.

If you require further information about Davis-Bacon and how to apply it to your project, please contact the Texas Water Development Board 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

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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

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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 bene 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,

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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.

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(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.

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(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.

(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.

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(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 las 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:

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(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,**

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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.

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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

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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:

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(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:

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(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 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

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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 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

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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.

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(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.

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(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.

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(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

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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 CRF 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.

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(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.

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(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 t 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 CRF 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.

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(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 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.

(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 stie 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.

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(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

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(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 CRF 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 statues 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 CRF 5.12. In addition, any Contractor or other person that fails to submit the required records or make those records available to WHD within

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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.

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(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 CRF 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 rations 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

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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.

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(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

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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.

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(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.

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(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.

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(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).

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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.

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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.

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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

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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

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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.

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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

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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.

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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.

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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.

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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

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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,

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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;

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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)

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- 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)

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EXHIBIT AA – WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA)SPECIAL CONDITIONS

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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.

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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 Contactor 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.

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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.

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(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

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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,

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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 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.

(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

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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

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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

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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.

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(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

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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.

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(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

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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.

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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.

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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.

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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:

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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

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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.

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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

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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.

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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

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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.

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Exhibit CIQ

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:
Sam Reidy
FE8AGF30DF664FD...
Signature of vendor doing business with the governmental entity

2/6/2026
Date

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

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

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

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

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

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

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

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

(2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

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

(1) the date that the vendor:

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

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

(2) the date the vendor becomes aware:

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

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

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

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.

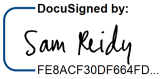
Certificate Of Completion

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
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Cori Power
901B Texas Street
Denton, TX 76209
cori.power@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
2/5/2026 2:18:50 PM
Holder: Cori Power
cori.power@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Cori Power cori.power@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**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
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial 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
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DocuSigned by: 4B070831B4AA438... 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
Sam Reidy slreidy@sundt.com President - W/WW Group Security Level: Email, Account Authentication (None), Login with SSO **Electronic Record and Signature Disclosure:** Accepted: 2/6/2026 9:13:41 AM ID: 8b2d1052-60d4-4f26-93c0-f2d72269bcd9	DocuSigned by:  FE8ACF30DF664FD... 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

Signer Events	Signature	Timestamp
Stephen D. Gay Stephen.Gay@cityofdenton.com General Manager Water Utilities Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 2/9/2026 11:10:41 AM ID: 5ecabcc9-4883-4439-9293-9ae0c6e9dcae	Signed by: FEB48BB9726E4A9... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 2/6/2026 5:34:48 PM Viewed: 2/9/2026 11:10:41 AM Signed: 2/9/2026 11:11:52 AM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		Sent: 2/9/2026 11:12:10 AM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ingrid Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **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
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 2/5/2026 2:31:40 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 2/9/2026 11:12:11 AM Viewed: 2/9/2026 4:24:38 PM

Carbon Copy Events	Status	Timestamp
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 Manjiyani sohil.manjiyani@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

Notary Events	Signature	Timestamp

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
Envelope Updated	Security Checked	2/5/2026 6:19:11 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

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Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address
To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..
In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

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To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
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:	•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.

Acknowledging your access and consent to receive materials electronically
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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Water Utilities & Street Operations
901-A Texas Street, Denton, TX 76209 • (940) 349-8700

MEMORANDUM

DATE: February 4, 2026

TO: City of Denton Public Utility Board

FROM: Stephen D. Gay, General Manager, Water Utilities & Street Operations

SUBJECT: Board Member Appointment Notification

On February 3, 2026, the City Council approved the appointment of Kyle Pedigo to serve as the City of Denton's representative on the Upper Trinity Regional Water District (UTRWD) Board of Directors. Mr. Pedigo will replace Mr. Gay for the remainder of the term ending May 30, 2029.

Mr. Pedigo is dedicated to Denton's continued involvement in the Water District and brings over twenty years of progressive experience in municipal infrastructure installation, capital program management, and utility planning. Mr. Pedigo has been with the City of Denton for approximately 6.5 years, including three years as the Water Utilities Planning and Engineering Division Manager, with responsibilities that include Asset Management and Business Services. His professional background and knowledge of regional water issues make him well-suited to represent the City on the UTRWD Board.

His appointment guarantees ongoing representation of Denton's interests in regional water planning and highlights the City's commitment to sustainable water resource management.

No action is needed from the Public Utilities Board.

Capital Projects/Engineering
401 N. Elm St., Denton, TX • (940) 349-8910

MEMORANDUM

DATE: February 23, 2026

TO: Members of the Public Utilities Board

FROM: Seth Garcia, Director of Capital Projects

SUBJECT: Hickory Creek Road Phase 3

This memo is in response to a request for a status update of the Hickory Creek Road Phase 3 capital improvement project, as made by Board Member Billy Cheek.

Current Schedule

Hickory Creek Road Phase 3 received a Notice to Proceed on May 12, 2025. The current planned substantial completion date is April 15, 2027, with final acceptance anticipated on May 20, 2027. The project experienced delays due to unexpected gas line relocation issues and weather impacts. Staff is currently evaluating opportunities to shorten the construction duration through modified design elements and revised phasing. There were numerous successes in 2025 including expediting the conststruction of the FM 1830/Hilltop northbound right-turn lane and the reconstruction of Hilltop Road (future Hickory Creek Road) over the summer months to reduce impact to school traffic. Current 2026 achievements include:

2026 Project Milestones & Successes

- **1/16/26:** Enlink completed gas line relocation
- **1/23/26:** 90% signal plans delivered for Country Club / Hickory Creek Road
- **2/09/26:** Beam installation over the creek underway
- **2/16/26:** Sinacola drillers returning to complete remaining drill shafts
- **2/17/26:** Eagle Ridge completing gas line relocation (pipe pull/push in progress)

Prepared By:
Tracy L. Beck, PE, PMP, PMI-CP

Submitted By:
Seth Garcia, PMP, Director of Capital Projects

Future Public Utilities Board Agenda Items

Note: This is a working draft of pending PUB items and is subject to change without notice.

Meeting Date	Item	Dept
February 23, 2026		
March 9, 2026		
March 23, 2026		
April 13, 2026		
April 27, 2026		
May 4, 2026		
May 18, 2026		
June 8, 2026		
June 22, 2026		
July 13, 2026		
July 27, 2026		
August 10, 2026		
August 24, 2026		
September 14, 2026		

September 28, 2026		
October 12, 2026	2027 PUB Schedule	DME
October 26, 2026		
November 16, 2026		
December 14, 2026		

Codes: Work Session WS, Consent Agenda CA, Individual Consideration IC

PUBLIC UTILITIES BOARD - NEW BUSINESS ACTION ITEMS

	DATE REQUESTED	REQUESTOR	ITEM	DEPT	STATUS
1.	2/9/26	Riback	Major Water and Wastewater infrastructure projects such as Ray Roberts Expansion, Pecan Creek Expansion and any others the department may deem responsive to this request.	Water/Waste water – Stephen Gay	Quarterly Reports 3/23/26, 6/22/26, 9/28/26, 12/14/26
2.					

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: **Denton Municipal Electric**

DCM: **Cassey Ogden**

DATE: **February 23, 2026**

SUBJECT

Receive a report, hold a discussion, and give staff direction regarding the City's utility billing process for electric service.

BACKGROUND

As part of a task/process transition between Denton Municipal Electric (DME) and Customer Service, staff identified 218 commercial accounts that had not been adjusted per the City's adopted electric rate ordinance as it relates to electric demand charges. This error occurred over a period of 24 months. As such, and in compliance with current governing ordinances, staff issued billing adjustments that resulted in refunds/credits to 32 customers and back billings to 186 customers. In advance of billing adjustments being sent to customers, staff made phone calls and sent written communication. Unfortunately, contact information was not accurate and available for some customers, which hindered communication and in at least one instance, a customer did not receive any communication at all due to human error. The net impact of these billing adjustments resulted in the recovery of $331,607.27 in revenue that should have been received had these commercial accounts been adjusted on a timely basis and in accordance with the adopted electric rate ordinance. When contacted, our Customer Service staff worked closely with customers to explain the billing adjustments and in some cases, payment arrangements were facilitated.

The nature of these billing adjustments relates to commercial customers only and the application of charges for power demand, also known as peak load. Demand charges are a component of base charges and do not include the Energy Cost Adjustment (ECA) or Transmission Cost Recovery Factor (TCRF). For small commercial customers with power demand below 21 kW, there are no demand charges. These customers only pay a fixed facility charge and usage charge as their base charge. For medium and large commercial customers, the base charge is comprised of a fixed facility charge, usage charge and demand charge. The use of demand charges for commercial customers is customary for electric utilities and DME has utilized them for more than 20 years. The key reason for their use is to size equipment to meet the customer's highest demand, ensure that costs are burdened effectively to customers driving the infrastructure costs, incentivize energy efficiency by encouraging customers to "flatten" their load especially during peak times, and application of a "ratchet" or lock period to further incentivize energy efficiency.

In preparation for this work session, DME staff surveyed five city-owned electric utilities (CPS Energy/San Antonio, Austin Energy, Garland Power & Light, Bryan Texas Utilities, Georgetown Electric Utility), reviewed Substantive Rules by the Public Utility Commission of Texas for Retail Electric Providers (REPs), and solicited input from our rates consultant. Findings and recommendations included in staff's presentation are based on information from those sources.

Staff will present this information to the City Council on February 17, 2026, and will communicate to the Public Utilities Board (PUB) any direction provided. Since staff anticipates updates to one or two ordinances, those ordinances will come back to the PUB first. If the PUB has any recommendations that differ from the direction provided by City Council, those will be communicated to City Council when they consider adoption of the ordinance(s).

EXHIBITS

1. Agenda Information Sheet
2. Presentation

Respectfully submitted:
Antonio Puente, Jr.
940-349-8487
DME General Manager

Billing Process for Electric Service

Tony Puente
DME General Manager

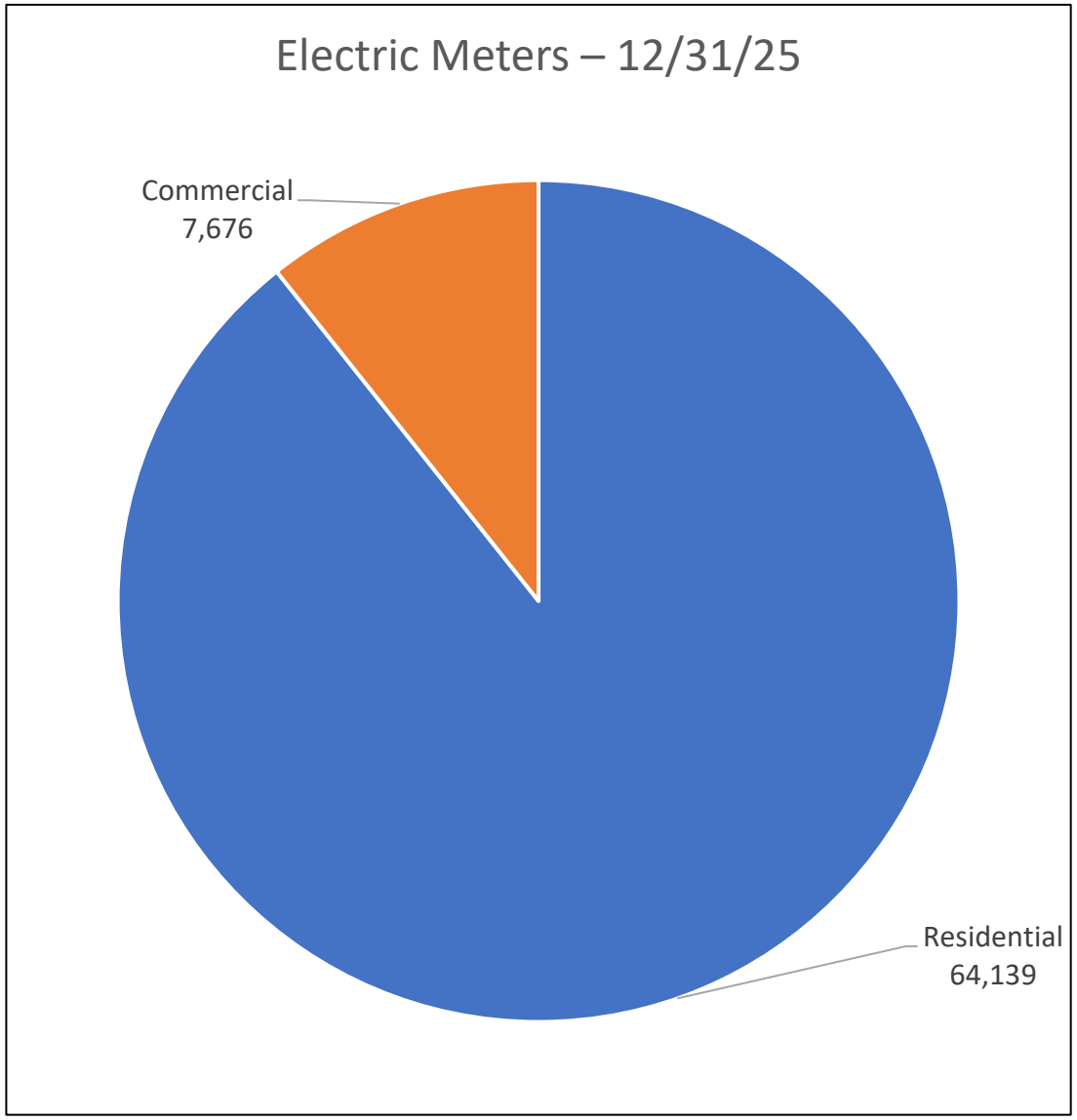
February 23, 2026

ID #PUB26-021

Objectives

1. Background
2. Overview of Adjustments
3. Governing Ordinances
4. Best Practice & Muni-Owned Electric Utility (MOU) Survey
5. Findings & Staff Recommendations
6. Questions

Background



- Annual Demand Charge Adjustments
  - 80-100, generally associated with new accounts not classified correctly when established.
  - Accounts may be re-classified up or down based on peak demand over 2 consecutive months.

- Overbilling and Underbilling of Electric accounts.
  - Department review found 218 commercial accounts had not been adjusted for Demand Charges.
  - Review period covered 24 months.
  - Staff initiated adjustments with intent to communicate with customers in advance. However, some did not have updated contact information on file, and at least one customer was not contacted.

Overview of Adjustments

- 218 Commercial Accounts, representing a net back billing of $331,607.27.
  - Overbilled accounts = 32
  - Underbilled accounts = 186
- Overbilled accounts were credited a total of $51,160.11.
  - Credits ranged from $21.19 to $10,071.00.
  - Average credit = $1,598.75.
  - Average annual billing = $11,556.00.
- Underbilled accounts were back billed a total of $382,767.38.
  - Back billings ranged from $21.52 to $26,922.65.
  - Average back bill = $2,057.89.
  - Average annual billing = $11,903.52.

Governing Ordinances

- Code of Ordinances, Chapter 26, Sec. 26-23 (4) –
  - "Adjustment period. The City shall also have the right to provide billing adjustments, consisting of back-billing or back credits, on prior billing for a period up to, but no greater than two (2) years."

- Ordinance No. 25-1688 –
  - General Service Small (GSS) – Not subject to Demand Charge.
  - General Service Medium (GSM) & Large (GSL) – Subject to Demand Charge.
  - Application – If power demand (i.e., peak load) exceeds minimum for the rate class in **two (2) consecutive months**, account is moved to the next rate class and locked for twelve (12) billing periods.
  - Calculation – Greater of (1) maximum actual monthly kW in a 15-minute interval, (2) minimum kW for rate class, or (3) 70% of maximum monthly kW during the previous months of May-October.

Best Practice & MOU Survey

- Best Practice: Commercial Demand Charges are the norm, but application and calculation vary.
- Surveyed Utilities: CPS Energy, Austin Energy, Garland Power & Light, Bryan Texas Utilities, & Georgetown.
- Rate Classes – Number and parameters vary. Main finding is transmission level rate classes.
- Demand Application – Small rate class has no demand charge. One month exceeding maximum kW moves account to next rate class; 12-month lock period in new rate class; and annually reviewed for compliance.
- Demand Calculation (for billing purposes) – Varies but generally the greater of (1) maximum 15-minute interval in the month, (2) minimum kW for rate class, or (3) percentage of highest kW for a specific period or installed capacity.
- Overbilling ("Back Credits") & Underbilling ("Back-Billing") Adjustments –
  - Overbillings range from 1 year to Initiation of Service.
  - Underbillings range from 6 months to 1 year.
  - PUCT Substantive Rule – 6 months for underbillings and Entire Period for overbillings.

Findings & Staff Recommendations

1. Overbilling and Underbilling two (2) year period not in line with surveyed MOUs or PUCT Substantive Rule for Retail Electric Providers (REPs).
   - ❑ Staff Recommendation: (1) Change overbilling billing period to Entire Period of Error; and (2) Change underbilling period to 6 months.

2. Demand Application of two (2) consecutive months generally not in line with surveyed MOUs.
   - ❑ Staff Recommendation: No change. Survey results vary but one-month measure is the norm. DME process reflects a higher threshold to account for various factors that may impact demand.

3. Rate Class Lock Period of 12 months partially in line with surveyed MOUs.
   - ❑ Staff Recommendation: No change to lock period, but addition of language clarifying that a review of the lock period will determine if customer remains in current rate class, is moved down to the next lower rate class, or is moved up to the next higher rate class if peak load exceeds the current rate classes kW maximum in 2 consecutive months.

Findings & Staff Recommendations

4. Demand Calculation generally consistent in tiering with surveyed MOUs although specific parameters vary.
   - ❑ Staff Recommendation: No change.

5. Billing adjustments associated with this review.
   - ❑ Staff Recommendation: (1) No change to overbilled/credited accounts, but (2) underbilled accounts should be corrected based on a 6-month period for the 24 period of the review, which means they will be refunded any underbilling amount and put back into their previous rate class. Latter recommendation will have no impact on customers that exceeded the 2 consecutive month threshold in the last 6 months of the review.

Questions