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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

Guidance Note—Introductory Statement—The following is a suggestion for use at the beginning of the Supplementary Conditions for a specific project:

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

SC-1.01.A.8 – Add the following at the end of the Paragraph:

The Change Order form to be used on this Project is EJCDC C-941 (2018). Agency approval is required before Change Orders are effective.

SC-1.01.A.30 – Add the following at the end of the Paragraph:

For the purposes of Rural Development, this term is synonymous with the term "applicant" as defined in 7 CFR 1780.7 (a) (1), (2) and (3) and is an entity receiving financial assistance from the federal programs.

SC-1.01.A.50 – Add the following at the end of the Paragraph:

The Work Change Directive form to be used on this Project is EJCDC C-940 (2018). Agency approval is required before a Work Change Directive is issued.

SC-1.01.A.51 – Add the following new paragraph immediately after Paragraph 1.01.A.50:

51. Agency - The Project is financed in whole or in part by USDA Rural Utilities Service pursuant to the Consolidated Farm and Rural Development Act (7 USC Section 1921 et seq.). The Rural Utilities Service

programs are administered through the USDA Rural Development offices; therefore, the Agency for these documents is USDA Rural Development.

SC-1.01.A.52 – Add the following new paragraph with the title “Domestic Preference Definitions” immediately after Paragraph 1.01.A.51:

52.a *Build America, Buy America Act (BABAA)* - Requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953-58 mandating domestic preference that all iron and steel, manufactured products, and construction materials are produced in the United States, in accordance with 2 CFR 184.

52.b *Construction Materials* - Those articles, materials, or supplies — other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives— that are or consist primarily of: non-ferrous metals, plastic and polymer- based products, glass, lumber or drywall.

52.c *Contractor’s Certification* - A certification submitted by Contractor that, to the best of the Contractor's knowledge and belief, all Work complies with Domestic Preference requirements.

52.d *De Minimis* - Materials and products that represent a small portion of an infrastructure project, specifically no more than 5% of the project costs up to a maximum of \$1,000,000.

52.e *Domestic Preference* - The Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

52.f *Engineer’s Certification* - Documentation submitted by the Engineer that Drawings, Specifications, and Bidding Documents comply with Domestic Preference requirements.

52.g *Manufactured Product* - Items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the product.

52.h *Manufacturer’s Certification* - Documentation provided by the Manufacturer stating that Domestic Preference requirements have been satisfied for all provided items. Manufacturers’ Certifications must include (at a minimum): specific list of products (using common names) associated with the certificate, location of the final manufacturing, signature of the manufacturer’s representative, and a reference to the Domestic Preference statute. If items are purchased via a Supplier, distributor, vendor, etc. from

the Manufacturer directly, then the Supplier, distributor, vendor, etc. will be responsible for obtaining and providing these certifications to the parties purchasing the products.

52.i *Minor Components* - Components within an iron and/or steel product otherwise compliant with the Domestic Preference requirements. This waiver, typically used by Manufacturers, allows use of non-domestically produced miscellaneous Minor Components comprising up to five percent of the total material cost of an otherwise domestically produced iron and steel product. However, unless a separate waiver for a product has been approved, all other iron and steel components in said product must still meet the Domestic Preference requirements. This waiver does not exempt the whole product from the Domestic Preference requirements only Minor Components within said product and the iron or steel components of the product must be produced domestically.

52.j *Primarily Iron or Steel* - A product is made of greater than 50 percent iron or Steel on a materials cost basis.

SC-1.01.A.53-56 – Add the following new paragraphs in the General Conditions immediately after subparagraph 1.01.A52.j.

- 53. *Award*-The formal acceptance of the Bid by Owner
- 54. *Bid Guarantee (Bid Bond)*- The security furnished with a Bid to guarantee that the Bidder will enter into the contract if Bidder's Bid is accepted by Owner.
- 55. *Equipment (Construction)*- All machinery and equipment, together with the necessary supplies for upkeep and maintenance, including tools and apparatus necessary for the proper construction and acceptable completion of the Work contemplated.
(Installation)– All material or articles used in equipping a facility or apparatus required to fulfill a functional design.
- 56. *Materials*- All materials incorporated into the Project, including equipment and all other materials consumed or to be consumed in the performance of the Work contemplated.

1.02 Terminology

SC-1.02.H-I – Add the following new paragraphs in the General Conditions immediately after Paragraph 1.02.G:

- H. *Calendar Day*: A calendar day is a day on the Gregorian Calendar. The Contract Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.
- I. *Holidays*: Owner-approved holidays for Contractor's Work are limited to New Year's (January 1, 2025); Martin Luther King Day (January 20, 2025); President's Day (February 17, 2025); Memorial Day (May 26, 2025), Juneteenth (June 19, 2025); Independence Day (July 4, 2025), Labor Day (September 1, 2025), Columbus Day (October 13, 2025), Veteran's Day (November 11, 2025); Thanksgiving Day (November 27, 2025), and Christmas (December 25, 2025).
- J. *Work Day*: Work days are all calendar days except Holidays, Saturdays, and Sundays.
- K. *Anticipated Weather Days*: An allowance of regular Work Days, established as anticipated

Work Days lost due to weather delays; said allowance shall be included in Contractor's proposed completion time. Only lost weather days in excess of Anticipated Weather Days shall be considered by Owner for time extensions based upon weather. Article 4 addresses Anticipated Weather Days.

- L. *Contract Price or Contract Time*: References to a change in "Contract Price or Contract Time" or "Contract Times or Contract Price" or similar, indicate that such change applied to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

SC-2.01 Delete Paragraphs 2.01.B. in its entirety and insert the following in their place:

- B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner copies of the policies (including all endorsements, and identification of applicable self-insured retentions and deductibles) of insurance required to be provided by Contractor in this Contract. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

SC-2.01 Delete Paragraph 2.01.C. in the General Conditions in its entirety.

2.02 *Copies of Documents*

SC-2.02 Amend the first sentence of Paragraph 2.02.A. in the General Conditions to read as follows:

Owner shall furnish to Contractor one printed copies of the Contract Documents (including one fully signed duplicate counterpart of the Agreement), and one (1) copy in electronic portable document format (PDF).

SC-2.03.A *Before starting construction*:

Delete the term "and" at the end of subparagraph A.2 and add the term "; and" as the end of subparagraph A.3. Also, Add the following to subparagraph 2.03.A:

4. A preliminary schedule of payments showing projected cash flow.

SC-2.04.A Delete paragraph 2.04.A in the General Conditions and insert the following in lieu thereof:

- A. Before the Contract Times start to run, and before a Notice to Proceed is given, a conference attended by Contractor, Engineer, through its County Engineering Department and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.03.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payments, electronic or digital transmittals, and maintaining required records.

2.06 *Electronic Transmittals*

SC-2.06 The term “shall” shall be deleted and replaced with “may” to 2.06.B. of the General Conditions.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

SC-3.01.A Add the following to paragraph 3.01.A in the General Condition:

F. The Contract Document higher in precedence shall control and supersede the Contract Documents lower in precedence in accordance with the following listing arranged from the highest to the lowest in precedence:

1. Addenda, if any; Supplemental Agreements; and Change Order(s); the one dated later having precedence over another dated earlier.
2. Agreement between Owner and Contractor for Construction Contract (EJCDC 520, 2018 version)
3. General Requirements (DIVISION 01 etc. if any).
4. Other Specifications (DIVISION 02 and other DIVISIONS following it).
5. Drawings.
6. Standard Details.
7. Supplementary Conditions (EJCDC-800, 2018 version) to the Contract.
8. General Conditions (EJCDC-700, 2018 version) to the Contract.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

SC-4.01.A – Delete the paragraph, and replace with:

- A. The Contract Times will commence on the day indicated in the Notice to Proceed. The Owner must issue a Notice to Proceed once all bonds and insurances required of the Project are in place and acceptable to Owner.

SC-4.02 Add the following paragraph 4.02.B

- B. All Site visits and all work at the Site shall be governed by the Owner's safety program if applicable. The Contractor shall be required to obtain a copy of the Owner's safety program, if applicable. The Contractor's efforts shall be consistent with and achieve the requirements of the Owner's safety program throughout the project. This does not alleviate the Contractor from the responsibility to develop and implement their own safety program.

SC-4.03.A Paragraph 4.03.A of the General Conditions shall be amended by adding the phrase “,if available,” after the word “shall” in the first sentence.

SC-4.03.A Add the following sentence at the end of paragraph 4.03A to the General Conditions:

Other than the metes and bounds noted in the survey, if any, Owner does not guarantee or warrant the accuracy of surveys provided, including the locations of utility lines, cables, pipes or pipelines, or the presence or absence of easements.

SC-4.04.A **Add the following sentence to the end of subparagraph 1 to paragraph 4.04.A.1 of the General Conditions:**

If, in the opinion of Engineer, Contractor falls behind the accepted Construction Schedule due to actions or neglect of Contractor or Contractor's agents, servants, employees, officers, subcontractors, directors, or any party contracting to perform part or all of the Work or to supply any equipment or materials, Contractor shall take steps, including, but not limited to, increasing the number of personnel, shifts, and/or overtime operations, days of work, and/or amount of construction equipment until such time as the Work is back on schedule. Contractor shall also submit for review not later than the time of submittal of the next request for partial payment such supplementary schedule or schedules as may be necessary to demonstrate the manner in which the acceptable rate of progress will be regained, all without additional cost to Owner.

SC-4.04.B Amend the sentence in Paragraph 4.05.B by striking out the following words:

“except as permitted by Paragraph 16.04”

SC-4.05.A Amend the sentence of Paragraph 4.05.A by striking out the following words:

“Contract Price”

4.05 *Delays in Contractor’s Progress*

SC-4.05 **Paragraph is mandatory for WWD projects.**

SC-4.05 Amend Paragraph 4.05.C by adding the following subparagraphs:

5. *Weather-Related Delays*

- a. If “abnormal weather conditions” as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled. **Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered abnormal weather conditions. Requests for time extensions due to abnormal weather conditions will be submitted to the Engineer within five days of the end of the abnormal weather condition event. It is the responsibility of the Contractor to provide the information listed in SC 4.05.b**
- b. The existence of abnormal weather conditions will be determined on a month-by-month basis in accordance with the following:
 - 1) Every workday on which one or more of the following conditions exist will be considered a “bad weather day”:
 - i) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day (regardless of whether such preceding day is a workday) through 7:00 p.m. on the workday in question equals or

exceeds **average** of precipitation as rain equivalent for previous 5 years, as determined by the National Weather Service.

- 2) Determination of actual bad weather days during performance of the Work will be based on the weather records measured and recorded by the **National Weather Service** weather monitoring station at **Corpus Christi, Texas**.
- 3) Contractor shall anticipate the number of foreseeable bad weather days per month.
- 4) In each month, every bad weather day exceeding the number of foreseeable bad weather days will be considered as “abnormal weather conditions.” The existence of abnormal weather conditions will not relieve Contractor of the obligation to demonstrate and document that delays caused by abnormal weather are specific to the planned work activities or that such activities thus delayed were on Contractor’s then-current Progress Schedule’s critical path for the Project.

SC-4.05.E Amend the sentence of Paragraph 4.05.E of the General Conditions by striking out the following words:

“Contract Times or”

SC-4.05.E.3 Amend the sentence of Subparagraph 4.05.E.1 of the General Conditions by striking out the following words:

“or Contract Price”

SC-4.05.E.4 Amend the sentence of Subparagraph 4.05.E.4 of the General Conditions by striking out the word “and “ at the end of the sentence and replacing with a period (“.”).

SC-4.05.E.5 Delete Subparagraph 4.05.E.5 of the General Conditions in its entirety.

SC-4.05.H Add the following new Paragraph to the General Conditions after paragraph 4.05.G:

H. This Contract does not permit the recovery of damages, including without limitation damages for delays in construction, extended home office overhead expenses, general conditions, or other consequential damages by the Contractor for delays or disruption of time due to bad weather or acts of God, or Owner caused delays. Contractor agrees that the only possible compensation for any delays in Construction is an extension of the Contract Time.

ARTICLE 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.01 Add the following paragraph 5.01.D immediately following paragraph 5.01.C of the General Conditions.

D. Any Work performed in a public right-of-way, in addition to conforming to the Contract Documents, shall be done in accordance with the requirements of the permit issued by the public agency in whose right-of-way the Work is located.

SC-5.02.A.2 This paragraph is reprinted without change from the General Conditions except for

removing the wording “or otherwise resolve the claim by arbitration or other dispute resolution proceeding” as shown:

5.02.A.2 If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, **CONTRACTOR SHALL** (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise;(b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or in a court of competent jurisdiction; and (c) **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM FROM AND AGAINST ANY SUCH CLAIM, AND AGAINST ALL COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT COSTS) ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH OWNER OR OCCUPANT AGAINST OWNER, ENGINEER, OR ANY OTHER PARTY INDEMNIFIED HEREUNDER TO THE EXTENT CAUSED DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART BY, OR BASED UPON, CONTRACTOR'S PERFORMANCE OF THE WORK, OR BECAUSE OF OTHER ACTIONS OR CONDUCT OF THE CONTRACTOR OR THOSE FOR WHICH CONTRACTOR IS RESPONSIBLE.**

SC-5.02.C. Amend the sentence of Paragraph 5.02.C. by striking out the word “Substantial” and replacing it with the word “Final”

5.03 *Subsurface and Physical Conditions*

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely: **[If there are no such reports, so indicate in the table.]**

Report Title	Date of Report	Technical Data
TBD	TBD	TBD

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely: **[If there are no such drawings, so indicate in the table.]**

Drawings Title	Date of Drawings	Technical Data
TBD	TBD	TBD

Drawings Title	Date of Drawings	Technical Data

- G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents at **Webb County's Engineering Department** during regular business hours, or may request copies from Engineer.

SC-5.04E. is amended by striking the term "Price and" from the title to the Paragraph and delete the subparagraphs in its entirety and replace with the following in lieu thereof:

5.04.E Possible Times Adjustment

1. Contractor shall be entitled to an equitable adjustment in Contract Times to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. INTENTIONALLY DELETED
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Times with respect to a subsurface or physical condition if:
 - a. contractor knew of the existence of such conditions at the time Contractor made a commitment to Owner with respect to Contract times by the submission of a Bid or becoming bound under a negotiated contract or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.05.A.
3. If Owners and Contractor agree regarding Contractor's entitlement to extent of any adjustment in Contract Times, then any such adjustment shall be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to extent of any adjustment in the Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

SC-5.05.F. Delete the term "Price and" from the title to Paragraph 5.05.F of the General Conditions and delete the Paragraph 5.05.F to the General Conditions in its entirety and replace with the following in lieu thereof:

F. Possible Times Adjustments

1. Contractor shall be entitled to an equitable adjustment in the Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, or causes an increase or decrease in Contractor's time required for, performance of the Work; subject however, to the following:
 - a. With respect to Work that is paid on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03.
 - b. Contractor's entitlement to an adjustment of the Contract Times, is subject to the provisions of Paragraph 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owners and Contractor agree regarding Contractor's entitlement to extent of any adjustment in Contract Times, then any such adjustment shall be set forth in a Change Order.
3. Contractor may submit a Change Proposal regarding its entitlement to extent of any adjustment in the Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions*

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely: **[If there are no such reports, so indicate in the table]**

Report Title	Date of Report	Technical Data
No Such known Reports	N/A	N/A

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely: **[If there are no such drawings, so indicate in the table]**

Drawings Title	Date of Drawings	Technical Data
No Such known Reports	N/A	N/A

SC-5.06.D Add the following sentence at the end of exiting paragraph 5.06.D of the General Conditions:

IF CONTRACTOR IMPORTS CONSTITUTENTS OF CONCERNS AND HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE OWNER, ITS CONSULTANTS, COMMISSIONERS COURT, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE.

SC-5.06.E. Paragraph 5.6.E to the General Conditions is deleted in its entirety and replaced with the following:

- E. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor 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 Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and in writing notify the Owner and Engineer of the condition. In the event the Contractor encounters polychlorinated biphenyl (PCB), and the specifications require the PCB's removal, the Contractor shall remove the PCB and store it in marked containers at the jobsite provided by the Owner. If PCBs are found which are leaking, then Contractor shall stop work on the affected fixture and shall contact Owner for removal and disposal of the leaking PCBs.

SC-5.06.F Paragraph 5.6.F to the General Conditions is deleted in its entirety and replaced with the following:

- F. Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor 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 Owner shall furnish in writing to the Contractor and Engineer 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 Contractor and the Engineer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Engineer has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Engineer 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 Owner and Contractor.

SC-5.06.G Paragraph 5.6G of the General Conditions is deleted in its entirety and replaced with the following:

G. Contractor may be entitled to an equitable adjustment regarding the Date of Substantial Completion and/or Final Completion due to Hazardous Conditions at the Worksite.

SC-5.06.H Paragraph 5.06.H is deleted in its entirety.

SC-5.06.I Paragraph 5.06.I is deleted in its entirety.

SC-5.06.J Paragraph 5.06.J is reprinted without change from the General Conditions 5.06.J except for font and size character change.

J. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM 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 ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE FAILURE TO CONTROL, CONTAIN, OR REMOVE A CONSTITUENT OF CONCERN BROUGHT TO THE SITE BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE OR TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.J SHALL OBLIGATE CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.

ARTICLE 6 BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

SC-6.01 – Disregard EJCDC Guidance Notes – Performance and Payment Bonds, Note 1. Performance and Payment Bonds are required for WEP projects.

SC-6.01.A to the General Conditions is deleted in its entirety and replaced with the following:

A. The Contractor shall furnish separate payment and performance covering faithful performance of the Contract and payment of obligations arising thereunder, each bond to be in a total amount equal to 100% of the Contract Sum. Provided, however, no limitation herein

shall limit Contractor's liability under the Contract Documents. Except as provided below, such bond shall be furnished to Owner before any work begins and not later than five business days after execution of the Contract by Owner. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance, and shall fully comply with Texas Insurance Code Section 3503.001 *et seq.* and Texas Government Code Chapter 2253, or their successors. The surety company shall have a rating of not less than "A-VII" according to the latest posted ratings on the A.M. Best website, www.ambest.com. The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Engineer in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion. These bonds must remain in effect until one year after the date when final payment become due or until completion of the correction period specified in paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:

1. *Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form of EJCDC® C-610, Performance Bond (2010, 2013, or 2018 edition).
2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® C-615, Payment Bond (2010, 2013, or 2018 edition).

SC-6.01 – EJCDC Guidance Notes – “Other Bonds,” Warranty Bond, Note 1. RD does not require a Warranty Bond, and RD will not accept a Warranty Bond in place of a Performance and Payment Bond. The decision to include a Warranty Bond is made by the Owner and their counsel. Please refer to EJCDC for guidance.

SC-6.01 Add the following

SC-6.01 Add the following subparagraphs immediately after Paragraph 6.01.B:

1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be **[two]** years after Substantial Completion.
2. After Substantial Completion, Contractor shall furnish a warranty bond issued in the form of EJCDC® C-612, Warranty Bond (2018). The warranty bond must be in a bond amount of **15** percent of the final Contract Price.
3. The warranty bond must be issued by the same surety that issues the performance bond required under Paragraph 6.01.A of the General Conditions.

6.02 Insurance—General Provisions

- SC-6.02.A The phrase “Owner and” shall be deleted from Paragraph 6.02.A of the General Conditions.
- SC-6.02.B The phrase “Owner or” shall be deleted from Paragraph 6.02.B of the General Conditions.
- SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:
1. Contractor may obtain worker’s compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the Project is located, (b) is certified or authorized as a worker’s compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker’s compensation insurance for similar projects by the state within the last 12 months.
- SC-6.02.E. Paragraph 6.02.E of the General Conditions shall be deleted in its entirety.
- SC-6.02.F Amend the sentence of Paragraph 6.02.F of the General Conditions by striking the words “or Contractor”
- SC-6.02.K Paragraph 6.02.K of the General Conditions is deleted in its entirety and replaced with the following:
- Without prejudice to any other right of remedy, if Contractor has failed to obtain the required insurances under this Agreement, the Owner may elect (but is in no way obligated) to obtain equivalent insurance to protect Owner’s interests at the expense of the Contractor who was required to provide such coverage, and the, and the Contract Price will be adjusted accordingly.
- SC-6.02.N The phrase “10 days” in the first sentence of Paragraph 6.02.N shall be deleted and replaced with “30 days”

6.03 Contractor’s Insurance

- SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:
- D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: **[Not Applicable.]**
 - E. *Workers’ Compensation and Employer’s Liability:* Contractor shall purchase and maintain workers’ compensation and employer’s liability insurance, including, as applicable, United States Longshoreman and Harbor Workers’ Compensation Act, Jones Act, stop-gap employer’s liability coverage for monopolistic states, and foreign voluntary workers’ compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers’ Compensation and Related Policies	Policy limits of not less than:
Workers’ Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman’s)	N/A

Workers' Compensation and Related Policies	Policy limits of not less than:
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	\$N/A
Bodily injury by disease—aggregate	\$N/A
Employer's Liability	
Each accident	\$1,000,000.00
Each employee	\$1,000,000.00
Policy limit	\$1,000,000.00
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	\$N/A

- F. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
 2. damages insured by reasonably available personal injury liability coverage, and
 3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
 - a. Such insurance must be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
 4. Underground, explosion, and collapse coverage.
 5. Personal injury coverage.
 6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and

CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.

7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.
- H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of “insured contract” (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
 2. Any exclusion for water intrusion or water damage.
 3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
 4. Any exclusion of coverage relating to earth subsidence or movement.
 5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability (other than worker’s compensation).
 6. Any limitation or exclusion based on the nature of Contractor’s work.
 7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
- I. *Commercial General Liability—Minimum Policy Limits*

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$2,000,000.00
Products—Completed Operations Aggregate	\$1,000,000.00
Personal and Advertising Injury	\$1,000,000.00
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000.00

- J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Person	\$1,000,000.00
Each Accident	\$1,000,000.00

Automobile Liability	Policy limits of not less than:
Property Damage	
Each Accident	\$1,000,000.00
[or]	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000.00

- K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$4,000,000.00
General Aggregate	\$4,000,000.00

- L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of **\$[4,000,000.00]** after accounting for partial attribution of its limits to underlying policies, as allowed above.
- M. *Contractor's Pollution Liability Insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance must be maintained for no less than three years after final completion.

Contractor's Pollution Liability	Policy limits of not less than:
Each Occurrence/Claim	\$100,000.00
General Aggregate	\$100,000.00

- N. *Contractor's Professional Liability Insurance:* If Contractor will provide or furnish professional services under this *Contract*, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The

retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

Contractor's Professional Liability	Policy limits of not less than:
Each Claim	\$N/A
Annual Aggregate	\$N/A

- O. *Railroad Protective Liability Insurance:* Prior to commencing any Work within 50 feet of railroad-owned and controlled property, Contractor shall (1) endorse its commercial general liability policy with ISO CG 24 17, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) purchase and maintain railroad protective liability insurance meeting the following requirements, (3) furnish a copy of the endorsement to Owner, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Owner of such submittal.

[Insert additional specific requirements, commonly set by the railroad, here.]

Railroad Protective Liability Insurance	Policy limits of not less than:
Each Claim	\$N/A
Aggregate	\$N/A

- P. *Unmanned Aerial Vehicle Liability Insurance:* If Contractor uses unmanned aerial vehicles (UAV—commonly referred to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor's compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

Unmanned Aerial Vehicle Liability Insurance	Policy limits of not less than:
Each Claim	\$N/A
General Aggregate	\$N/A

- Q. *Other Required Insurance:* **[N/A.]**

6.04 *Builder's Risk and Other Property Insurance*

SC-6.05.B.C.D.& E Paragraphs 6.05.B., C, D, and E of the General Conditions are deleted in its entirety.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

F. *Builder's Risk Requirements:* The builder's risk insurance must:

1. be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).
 - a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
 - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.
2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of contractors, engineers, and architects).
4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
5. extend to cover damage or loss to insured property while in transit.
6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
8. include performance/hot testing and start-up, if applicable.

9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
10. include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds."
11. If debris removal in connection with repair or replacement of insured property is subject to a coverage sublimit, such sublimit will be a minimum of **\$100,000.00**.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provision:

- G. *Coverage for Completion Delays:* The builder's risk policy will include, for the benefit of Owner, loss of revenue and soft cost coverage for losses arising from delays in completion that result from covered physical losses or damage. Such coverage will include, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, compensation for loss of net revenues, rental costs, and attorneys' fees and engineering or other consultants' fees, if not otherwise covered.

ARTICLE 7- CONTRACTOR'S RESPONSIBILITIES

SC-7.02.B Paragraph 7.02.B of the General Conditions is deleted in its entirety and replaced with the following in lieu thereof:

- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent. Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site during performance of the Work, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within 30 days of Substantial Completion.

SC-7.02.C Add the following new Paragraph to the General Conditions immediately after 7.02.B:

- C. Owner shall be notified not less than 24 hours before any time that superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, then an amount equal to the superintendent's daily rate shall be deducted from the amount owed to the Contractor under general conditions for such day.

7.03 Labor; Working Hours

SC-7.03 Add the following new subparagraphs immediately after Paragraph 7.03.C:

1. Regular working hours will be **Monday-Friday 8:00 a.m. to 5:00 p.m.**
2. Owner's legal holidays are **Federal Recognized holidays**.

SC-7.03 Amend the first and second sentences of Paragraph 7.03.C to state "...all Work at the Site must be performed during regular working hours, **Monday** through **Friday**. Contractor will not perform Work on a **Saturday, Sunday**, or any legal holiday."

SC-7.03 Add the following new paragraph immediately after Paragraph 7.03.C:

- D. **Contractor** shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer's services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

SC-7.04.D – Add the following new paragraph immediately after Paragraph 7.04.C:

- D. All products must meet Domestic Preference requirements.

SC-7.04.E – Add the following new paragraph immediately after Paragraph 7.04.D:

- E. For projects utilizing a *De Minimis* waiver, Contractor shall maintain an itemized list of non-domestically produced components and ensure that the cost is less than 5% of total project cost for project up to a maximum of \$1,000,000.

SC-7.05.A – Amend the third sentence of paragraph by striking out the following words:

Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item is permitted,

SC-7.05.B – Add the following at the end of paragraph:

Contractor shall include a Manufacturer's Certification or waiver for compliance with Domestic Preference requirements and supporting data, as applicable. Refer to Sample Language for Manufacturer's Certification provided in these Contract Documents.

SC-7.06.A.3.a.2 – Remove "and" from the end of paragraph.

SC-7.06.A.3.a.3 – Add "; and" to the end of paragraph.

SC-7.06.A.3.a.4 – Add the following new paragraph immediately after Paragraph 7.06.A.3.a.3:

4. Comply with Domestic Preference requirements by providing Manufacturer's Certification or waiver, as applicable. Refer to Sample Language for Manufacturers' Certification provided in these Contract Documents.

SC-7.07.B – Delete paragraph in its entirety and insert "Deleted".

SC-7.07.D Delete paragraph 7.07.D to the General Conditions and insert the following in lieu thereof, and add subparagraph 7.07.D.1:

D. Contractor shall submit to the Owner a list of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner as stipulated in the Bidding Documents. Owner's acceptance (either in writing or by failing to make written objection thereto within two weeks of submittal of the list) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation.

1. Subcontracting: Contractor shall perform with Contractor's own organization work amounting to not less than 51 percent of the combined value of all items of the Work covered by the Contract.

SC-7.07.E Delete the second sentence of paragraph and insert the following in its place:

Owner may not require that Contractor use a specific replacement.

SC-7.07.F Delete paragraph 7.07.F of the General Conditions and insert the following in lieu thereof:

F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall not be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement.

SC-7.07.N Add the following new Paragraph to the General Conditions after 7.07.M. as follows:

N. By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Engineer. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, included as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to 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. Each subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in an amount commensurate with the Work to be performed by the Subcontractor.

SC-7.07.P Add the following new Paragraph to the General Conditions after 7.07.N as follows:

- P. Neither the Owner nor the Engineer shall be obligated to pay or to ensure the payment of any monies to subcontractors due to any non-payment to the Contractor or non-payment of subcontractors by the Contractor.

SC-7.07.Q Add the new Paragraph to the General Conditions after 7.07.Q as follows:

Prevailing Wage Rates

- Q. Contractor, Contractor's Subcontractors and Sub-subcontractors shall pay all workers not less than the general prevailing wage rate determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at <https://www.wdol.gov/> or <https://beta.sa.gov/>) effective as of the date of this Agreement. In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerned with labor, equal employment opportunity, safety, and minimum wages.

SC-7.07.R Add new Paragraph to the General Conditions after 7.07.Q as follows:

- R. Contractor shall forfeit, as a penalty to the Owner, \$60 for each laborer, worker, or mechanic employed for each calendar day or party of the day that the worker is paid less than the wage rate stipulated in the Contract

SC-7.08.B Paragraph 7.08.B of the General Conditions is deleted its entirety.

SC-7.08.C Paragraph 7.08.C of the General Conditions is reprinted without Change except for the font size and bold print

- C. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, MEMBERS PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM 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 ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE NOT SPECIFIED IN THE CONTRACT DOCUMENTS.**

7.10 *Taxes*

SC-7.10 Add a new paragraph immediately after Paragraph 7.10.A:

- A. Owner is exempt from payment of sales and compensating use taxes of the State of **Texas** and of cities and counties thereof on all materials to be incorporated into the Work.

1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

SC-7.11 A Delete paragraph 7.11.A of the General Conditions and insert the following paragraph 7.11.A in lieu thereof:

- A. Contractor shall give all notices required by and comply with all Laws and Regulations applicable to furnishing and performance of the Work and shall cause all Contractor's agents, employees, Subcontractors, and Suppliers to observe and comply with all such laws, ordinances, and regulations. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws of Regulations.

SC-7.12.A Amend paragraph by adding the following after "written interpretations and clarifications,":

Manufacturers' Certifications,

7.13 *Safety and Protection*

SC-7.13.B Insert the following at the end of Paragraph 7.13.B of the General Conditions:

"The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition, and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 *et seq.*, and all amendments thereto. However, the Contractor's duties herein shall not relieve any Subcontractor or any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees."

SC-7.13.F Insert the following at the beginning of Paragraph 7.13.F of the General Conditions:

"With at least a 48-hour notice,"

SC-7.13 Insert the following after the second sentence of Paragraph 7.13.G:

The following Owner safety programs are applicable to the Work: All Federal and State Workplace Safety Regulations.

SC-7.13.H, I, J, K, & L Add the following paragraphs immediately after paragraph 7.12.G to the General Conditions.

- H. Contractor shall make reasonable efforts to detect and abate any violations of

safety standards of which Contractor is aware and to which Contractor's employees are exposed, despite the fact that Contractor did not commit the violation.

I. Trench and Excavation Safety System:

1. This section covers trench and excavation safety system required for constructing improvements that necessitate open excavations on the project. All work under this item shall be in accordance with the current edition of the "Occupational Safety and Health Administration Standard for Excavation and Trenches Safety System, 29 CFR 1926, Subpart P.
2. The Contractor, prior to beginning any excavation, shall notify the State Department of Labor (Safety Division) that work is commencing on a project with excavations greater than five feet.
3. The Contractor shall notify all Utility Companies and Owners in accordance with OSHA Administration 29 CFR 1926.651(b) (2) for the purpose of locating utilities and underground installations.
4. Where the trench or excavation endangers the stability of a building, wall, street, highway, utilities, or other installation, the Contractor shall provide support systems such as shoring, bracing, or underpinning to ensure the stability of such structure or utility.
5. The Contractor may elect to remove and replace or relocate such structures or utilities with the written approval of the Owner of the structure or utility and the Project Owner.
6. The work required by this item will be paid for at the price bid for "Trench and Excavation Safety Systems". After award of the Contract, the Contractor shall submit to the Engineer a breakdown of cost for work involved in the price bid for "Trench and Excavation Safety Systems" and shall, with each periodic payment request, submit a certification by the Contractor's "competent person" as defined in Subpart "P" 1926.650(b) that the Contractor has complied with the provisions of "Occupational Safety and Health Administration Standard for Excavation and Trenches Safety System" 29 CFR 1926 Subpart P for work for which payment is requested.

- J. Contractor will comply with all applicable federal, state, and local drug and alcohol-related laws and regulations (e.g., Department of Transportation regulations, Drug-Free Workplace Act). Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace while on Owner's premises or performing the Work. Contractor will remove any of its employees, agents, subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, and at

any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed may only be considered for return to work after the Contractor certifies, as a result of a for-cause test, conducted immediately following removal that said person was in compliance with this Contract. Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.

- K. Owner has also banned the presence of all weapons on the Project site, whether or not the owner thereof has a permit for a weapon, and Contractor agrees that Contractor's representatives, employees, agents, and subcontractors will abide by same. Weapons may only be permitted in Owner's parking lots if weapons are locked in personal vehicles in Owner's parking lot.

SC-7.16.A.1.c – Amend paragraph by deleting the last period and adding:

, including Manufacturer's Certification, or waiver for any item in the submittal subject to Domestic Preference requirements. Refer to the Sample Language for Manufacturers' Certification provided in these Contract Documents.

SC-7.16.C.9 – Add new paragraph immediately after Paragraph 7.16.C.8:

9. Engineer's review and approval of a Shop Drawing or Sample shall include review of Manufacturers' Certifications and any waivers in order to document compliance with Domestic Preference requirements, as applicable.

SC-7.17.B.1-Amend the subparagraph by deleting the term "60" and replacing it with "90."

SC-7.17.F – Add new paragraph immediately after Paragraph 7.17.E:

F. Contractor shall certify prior to final payment that all Work and Materials have complied with Domestic Preference requirements. Contractor shall provide Certification to Owner and Engineer. Refer to the Sample Language for Contractor's Certification provided in these Contract Documents.

SC-7.18.A Paragraph 7.18.A. is deleted in its entirety from the General Conditions and replaced with the following in lieu thereof:

- A. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, AND IN ADDITION TO ANY OTHER OBLIGATIONS OF CONTRACTOR UNDER THE CONTRACT, OR OTHERWISE, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, ENGINEER, OWNER'S COMMISSIONERS COURT, ENGINEER'S CONSULTANTS, OWNER'S CONSULTANTS, OFFICERS, AGENTS AND EMPLOYEES OF ANY OF THEM, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OR FURNISHING OF THE

Exhibit A—Software Requirements for Electronic Document Exchange.

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WORK, PROVIDED THAT ANY SUCH CLAIM, ACTION, DAMAGE, LOSS, COST, JUDGEMENT OR ARISING FROM THIRD PARTY CLAIMS OR ACTIONS IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF) INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUB-CONTRACTOR, ANY SUPPLIER, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM TO PERFORM THE WORK, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR OTHER INDEMNIFIED PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS PARAGRAPH 7.18.A ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF TEXAS.

ARTICLE 8-OTHER WORK AT THE SITE

8.02 Coordination

SC-8.03.A- Delete the first sentence in Paragraph 8.03.A of the General Conditions and replace with the following:

If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction then Contractor **may** be entitled to an equitable adjustment in the Contract Times, but shall not be entitled to an adjustment in the Contract Price due to delays.

SC-8.03.A-Delete all references to the term "Contract Price" from the remainder of Paragraph 8.03A of the General Conditions.

ARTICLE 9-OWNER'S RESPONSIBILITIES

SC-9.03.A- Delete paragraph 9.03.A to the General Conditions in its entirety and insert the following in lieu thereof:

- A. The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness after receiving the Contractor's written request for such information or services. Absent such timely notification, any Claim based upon lack of such information or services shall be waived.

SC-9.06- Delete Paragraph 9.06 of the General Conditions in its entirety.

SC-9.11-Delete Paragraph 9.11 to the General Conditions in its entirety.

SC-9.12.B Delete Paragraph 9.12.B of the General Conditions in its entirety.

9.13 *Owner's Site Representative*

SC-9.13 Add the following new paragraph immediately after Paragraph 9.12 of the General Conditions:

9.13 *Owner's Site Representative*

- A. Owner will furnish an "Owner's Site Representative" to represent Owner at the Site and assist Owner in observing the progress and quality of the Work. The Owner's Site Representative is not Engineer's consultant, agent, or employee. Owner's Site Representative will be the Webb County Engineering Department. The authority and responsibilities of Owner's Site Representative follow: **Webb County Engineer Guillermo Cuellar, P.E.**

ARTICLE 10 ENGINEER'S STATUS DURING CONSTRUCTION

10.03 *Resident Project Representative*

SC-10.03 Add the following new subparagraph immediately after Paragraph 10.03.A:

1. On this Project, by agreement with the Owner, the Engineer will not furnish a Resident Project Representative to represent Engineer at the Site or assist Engineer in observing the progress and quality of the Work.

Guidance Notes—RPR Services—As discussed, the most typical case is that the site representative is Engineer's consultant, agent, or employee, in which case SC-10.03.C and SC-10.03.D are mandatory. SC-10.03.C and SC-10.03.D focus on the role of the Resident Project Representative with respect to the Contractor. The RPR's scope of services and obligations to Owner are typically more extensive than the provisions here in the construction contract; they are spelled out in detail in Exhibit D to EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services. The following should be edited to indicate the specific RPR authority and responsibilities that apply to this Contract.

1. **SC-10.07.A-The second sentence in Paragraph 10.07.A is deleted in its entirety.**

ARTICLE 11 CHANGES TO THE CONTRACT

SC-11.02.C – Add new paragraph immediately after Paragraph 11.02.B:

- C. The Engineer or Owner shall contact the Agency for concurrence on each Change Order prior to issuance. All Contract Change Orders must be concurred on (signed) by Agency before they are effective.

SC-11.03.A.2 - Add new Paragraph 11.03.A.2 immediately after Paragraph 11.03.A, which shall be renamed Paragraph 11.03.A.1:

2. The Engineer or Owner shall contact the Agency for concurrence on each Work Change Directive prior to issuance. Once authorized by Owner, a copy of each Work Change Directive shall be provided by Engineer to the Agency.

SC-11.05.B – Add the following at the end of this paragraph:

For Owner-authorized changes in the Work, the Contractor will provide the Manufacturer's Certification, or waiver, for materials subject to Domestic Preference requirements except when sole-source is specified, in which case the Engineer will provide the Manufacturer's Certification, or waiver.

SC-11.07.B.2 -Delete the phrase "(which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2)" from 11.07.B.2 of the General Conditions.

SC-11.07.B.3-Delete the phrase "plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C" from 11.07.B.3 of the General Conditions.

SC-11.07.C-Delete Paragraph 11.07.C of the General Conditions in its entirety.

SC-11.09.B.2.c – Add new paragraph immediately after Paragraph 11.09.B.2.b:

c. For change orders involving materials subject to Domestic Preference requirements, Contractor shall include a Manufacturer's Certification or waiver, as applicable. Refer to the Sample Language for Manufacturer's Certification provided in these Contract Documents.

ARTICLE 12 CLAIMS

SC-12.01.A Paragraph 12.01.A of the General Conditions is deleted in its entirety and replaced with the following:

- A.** Claims by the Contractor against the Owner, including those alleging an error or omission by the Engineer, shall be referred initially to the Engineer for written recommendation. An initial recommendation by the Engineer shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Engineer with no recommendation having been rendered by the Engineer.

SC-12.01.B. Paragraph 12.01.B of the General Conditions is deleted in its entirety and replaced with the following in lieu thereof:

- B.** The Engineer shall review Claims and within ten (10) days of the receipt of the Claim and take one of the following actions: (1) request additional supporting data from the Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor.

SC-12.01.C Paragraph 12.01.C of the General Conditions is deleted in its entirety and replaced with the following in lieu thereof:

- C. If the Engineer requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either provide a response on the requested supporting data, advise the Engineer when the response or supporting data will be furnished, or advise the Engineer that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Engineer will either reject or approve the Claim in whole or in part.

SC-12.01.D-Paragraph 12.01.D of the General Conditions is deleted in its entirety and replaced with the following in lieu thereof:

- D. Following receipt of the Engineer's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Article 17.

SC-12.01.E-Paragraph 12.01.E of the General Conditions is deleted in its entirety and replaced with the following in lieu thereof:

- E. Upon receipt of a Claim against the Contractor or at any time thereafter, the Engineer or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Engineer or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

SC-12.01.F&E-Paragraphs 12.01.F and G of the General Conditions are deleted in their entirety.

ARTICLE 13 COST OF WORK; ALLOWANCES, UNIT PRICE WORK

13.01 *Cost of the Work*

SC-13.01 Supplement Paragraph 13.01.B.5.c.(2) by adding the following sentence:

The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition of **Rental Rate Blue Book for Construction Equipment**.

SC-13.01 Supplement Paragraph 13.01.C.2 by adding the following definition of small tools and hand tools:

- a. For purposes of this paragraph, "small tools and hand tools" means any tool or equipment whose current price if it were purchased new at retail would be less than \$500.

SC-13.01.D-Delete Paragraph 13.01.D of the General Conditions in its entirety and insert "Deleted."

SC-13.02.C – Delete paragraph in its entirety and insert "Deleted".

13.03 *Unit Price Work*

SC-13.03 Delete Paragraph 13.03.E in its entirety and insert the following in its place:

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the extended price of a particular item of Unit Price Work amounts to [number] percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than [number] percent from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14-TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

SC-14.03.G – Add new paragraph immediately after Paragraph 14.03.F:

- F. Installation of materials that are non-compliant with Domestic Preference requirements shall be considered defective work. Contractor should ensure that Engineer has an approved Manufacturer's Certification, or waiver, prior to any domestic preference compliant item being delivered to the project site.

ARTICLE 15-PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

15.01 *Progress Payments*

SC-15.01.B.4 – Add the following language at the end of paragraph:

No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage or invest the retainage for the benefit of the Contractor.

SC-15.01.B.5 – Add new paragraph immediately after Paragraph 15.01.B.4:

5. The Application for Payment form to be used on this Project is EJCDC® C-620. The Agency must approve all Applications for Payment before payment is made.

SC-15.01.B.6 – Add new paragraph immediately after Paragraph 15.01.B.5:

6. By submitting an Application for Payment, based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials are compliant with Domestic Preference requirements. Manufacturer's Certification for material(s) satisfy these requirements. Refer to the Sample Language for Manufacturer's Certification provided in these Contract Documents.

SC-15.01.C.2.d – Add the following new paragraph immediately after Paragraph 15.01.C.2.c:

- d. The materials presented for payment in an Application for Payment comply with Domestic Preference requirements.

SC-15.01.D.1 – Delete paragraph in its entirety and insert the following in its place:

The Application for Payment with Engineer's recommendations will be presented to the Owner and Agency for consideration. If both the Owner and Agency find the Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 15.01.E will become due twenty (20) days after the Application for Payment is presented to the Owner, and the Owner will make payment to the Contractor.

SC-15.01 Add the following new Paragraph 15.01.F:

- F. For contracts in which the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work (as measured by reference to the Schedule of Values), or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that Contractor prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price (if any), through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

SC-15.02.A – Amend paragraph by striking out the following text: "7 days after".

15.03 *Substantial Completion*

SC-15.03.A – Modify by adding the following after the last sentence:

Contractor shall also submit the Contractor's Certification of Compliance certifying that to the best of the Contractor's knowledge and belief all Iron and Steel products, Manufactured Products, and Construction Materials proposed in the Shop Drawings,

Change Orders, and Partial Payment Estimates, and those installed for the Project, comply with Domestic Preference requirements.

SC-15.03 Add the following new Paragraph immediately after 5.03.A.4:

- B. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

SC-15.07 Adding the following new paragraph after 15.07.B of the General Conditions:

- C. At the project's completion, the Contractor shall execute a Release and Lien Waiver to release all claims against the Owner arising under and by virtue of his Contract. The date of the Release shall be that agreed to for the final acceptance of the project with the Owner. The Release form and Contractor's Affidavit form are included at the end of these Supplementary Conditions.

15.08 Correction Period

SC-15.08.A Delete the term "Substantial from Paragraph 15.08.A of the General Conditions and replace with the term "Final."

SC-15.08.C Delete the term "or arbitration" from Paragraph 15.08.C of the General Conditions

SC-15.08.D Delete the term "substantial" from Paragraph 15.08.D of the General Conditions and replace with the term "final".

SC-15.08 Add the following new Paragraph 15.08.G:

- G. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be the number of years set forth in SC-6.01.B.1; or if no such revision has been made in SC-6.01.B, then the correction period is hereby specified to be **two** years after Substantial Completion.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

SC-16.01.A-The third sentence of Paragraph 16.01.A is amended by deleting the second sentence in its entirety and replacing with the following:

"At the discretion of the Owner, the Contactor may be entitled to an extension of the Contract Time, directly attributable to the suspension."

SC-16.04.B-The last sentence of Paragraph 16.04.B of the General Conditions is deleted in its entirety

ARTICLE 17—/FINAL RESOLUTIONS OF DISPUTES

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01 of the General Conditions.

SC-17.02 Dispute Resolution Process: Non-Binding Mediation

- A. Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived under the terms of the Contract Documents, shall, after written recommendation by the Engineer or thirty (30) days after submission of the Claim to the Engineer, be subject to non-binding mediation at the request of either party. Owner and Contractor expressly agree that mediation shall be a condition precedent to the initiation of any litigation arising out of such Claims. Claims for injunctive relief shall not be subject to this Section.
- B. The parties shall endeavor to resolve their Claims by non-binding mediation. Requests for such mediation shall be filed in writing with the other party to the Contract. Mediation shall be conducted by a mutually-agreed- upon mediator based in Webb County. In the event that the parties are unable to agree on a mediator then Owner shall determine who will be the mediator.
- C. The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Commissioners Court, signed by the parties, if approved by the Commissioners Court, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.
- D. Any claim not resolved in mediation shall be subject to litigation in the State Courts of Webb County, Texas.

17.03 Attorneys' Fees

Guidance Notes—Prevailing Party Attorneys' Fees Clause—In most jurisdictions in the United States, as a general matter each party to a dispute is responsible for its own attorneys' fees, unless an express agreement provides to the contrary. Some legal authorities believe that this general rule encourages claims and disputes, because under the general rule claimants have little concern that they will be forced to pay for the opposing party's fees if the claim fails. Other authorities take the opposite view—that if a prevailing-party attorneys' fee rule is used instead of the general rule, then the enticing prospect of not only prevailing but also of having one's own fees paid by the opponent would encourage overly aggressive pursuit of claims (or overzealous defense against valid claims).

If an exception to the general United States rule is preferred for disputes subject to final resolution under Article 17, then add the following express agreement:

17.03 Attorneys' Fees

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

ARTICLE 18—MISCELLANEOUS

SC-18.04.B. Add the following new Paragraph immediately after subparagraph 18.04.A of the General Conditions.

B. This Agreement does not permit the recovery of damages, including without limitation, extended home office overhead expenses, general conditions, or other consequential damages, by Contractor for delays or disruption in the Work or for extension of time due to bad weather or acts of God nor Owner caused delays or suspension of Work. Contractor agrees that the only possible compensation for any delay in the Work due to either Owner or Contractor's fault is an extension of time.

SC-18.11 – Add new paragraph immediately after Paragraph 18.10:

18.11 *Tribal Sovereignty*

A. No provision of this Agreement will be construed by any of the signatories as abridging or debilitating any sovereign powers of the [Noneinsert name of Tribe] Tribe; affecting the trust-beneficiary relationship between the Secretary of the Interior, Tribe, and Indian landowner(s); or interfering with the government-to-government relationship between the United States and the Tribe.

SC-19 – Add the following new Article 19 immediately after Article 18:

Article 19 - FEDERAL REQUIREMENTS

19.01 *Agency Not a Party*

A. This Contract is expected to be funded in part with funds provided by Agency. Neither Agency, nor any of its departments, entities, or employees, is a party to this Contract.

19.02 *Contract Approval*

A. Owner and Contractor will furnish Owner's attorney such evidence as required so that Owner's attorney can complete and execute the "Certificate of Owner's Attorney" before Owner submits the executed Contract Documents to Agency for approval. Refer to

Exhibit A—Software Requirements for Electronic Document Exchange.

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Certificate of Owner's Attorney and Agency Concurrence provided in these Contract Documents.

B. Agency concurrence is required on both the Bid and the Contract before the Contract is effective.

19.03 *Conflict of Interest*

A. Contractor may not knowingly contract with a Supplier or Manufacturer if the individual or entity who prepared the Drawings and Specifications has a corporate or financial affiliation with the Supplier or Manufacturer. Owner's officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest or other interest in or a tangible personal benefit from the Contractor. Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractor or subcontractors.

19.04 *Gratuities*

A. If Owner finds after a notice and hearing that Contractor, or any of Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of Owner or Agency in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, Owner may, by written notice to Contractor, terminate this Contract. Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.

B. In the event this Contract is terminated as provided in paragraph 19.04.A, Owner may pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, Owner may pursue exemplary damages in an amount (as determined by Owner) which shall not be less than three nor more than ten times the costs Contractor incurs in providing any such gratuities to any such officer or employee.

19.05 *Small, Minority and Women's Businesses*

A. If Contractor intends to let any subcontracts for a portion of the work, Contractor will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps will include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

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2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

19.06 *Anti-Kickback*

A. Contractor shall comply with the Copeland Anti-Kickback Act (40 USC 3145) as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States"). The Act provides that Contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. Owner shall report all suspected or reported violations to Agency.

19.07 *Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended*

A. Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

19.08 *Equal Employment Opportunity*

A. The Contract is considered a federally assisted construction contract. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

19.09 *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*

A. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification (RD Instruction 1940-Q Exhibit A-1). The Contractor certifies to the Owner and every subcontractor certifies to the Contractor that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining the Contract if it is covered by 31 U.S.C. 1352. The Contractor and every subcontractor must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

19.10 Environmental Requirements

A. When constructing a Project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental conditions:

1. Wetlands – When disposing of excess, spoil, or other Construction Materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.

2. Floodplains – When disposing of excess, spoil, or other Construction Materials on public or private property, Contractor shall not fill in or otherwise convert 100-year floodplain areas (Standard Flood Hazard Area) delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, e.g., alluvial soils on NRCS Soil Survey Maps.

3. Historic Preservation - Applicants shall ensure that Contractors maintain a copy of the following inadvertent discovery plan onsite for review:

a. If during the course of any ground disturbance related to any Project, any post review discovery, including but not limited to, any artifacts, foundations, or other indications of past human occupation of the area are uncovered, shall be protected by complying with 36 CFR § 800.13(b)(3) and (c) and shall include the following:

i. All Work, including vehicular traffic, shall immediately stop within a 50 ft. radius around the area of discovery. The Contractor shall ensure barriers are established to protect the area of discovery and notify the Engineer to contact the appropriate RD personnel. The Engineer shall engage a Secretary of the Interior (SOI) qualified professional archeologist to quickly assess the nature and scope of the discovery; implement interim measures to protect the discovery from looting and vandalism; and establish broader barriers if further historic and/or precontact properties, can reasonably be expected to occur.

ii. The RD personnel shall notify the appropriate RD environmental staff member, the Federal Preservation Officer (FPO), and State Historic Preservation Office (SHPO) immediately. Indian tribe(s) or Native Hawaiian Organization (NHOs) that have an interest in the area of discovery shall be contacted immediately. The SHPO may require additional tribes or NHOs who may have an interest in the area of discovery also be contacted. The notification shall include an assessment of the discovery provided by the SOI qualified professional archeologist.

iii. When the discovery contains burial sites or human remains, the Contractor shall immediately notify the appropriate RD personnel who will contact the RD environmental staff member, FPO, and the SHPO. The relevant law enforcement authorities shall be immediately contacted by onsite personnel to reduce delay times, in accordance with tribal, state, or local laws including 36 CFR Part 800.13; 43 CFR Part 10, Subpart B; and the Advisory Council on Historic Preservation's Policy Statement Regarding treatment of Burial Sites, Human Remains, or Funerary Objects (February 23, 2007).

iv. When the discovery contains burial sites or human remains, all construction activities, including vehicular traffic shall stop within a 100 ft. radius of the discovery and barriers shall be established. The evaluation of human remains shall be conducted at the site of discovery by a SOI qualified professional. Remains that have been removed from their primary context and where that context may be in question may be retained in a secure location, pending further decisions on treatment and disposition. RD may expand this radius based on the SOI professional's assessment of the discovery and establish broader barriers if further subsurface burial sites, or human remains can reasonably be expected to occur. RD, in consultation with the SHPO and interested tribes or NHOs, shall develop a plan for the treatment of native human remains.

v. Work may continue in other areas of the undertaking where no historic properties, burial sites, or human remains are present. If the inadvertent discovery appears to be a consequence of illegal activity such as looting, the onsite personnel shall contact the appropriate legal authorities immediately if the landowner has not already done so.

vi. Work may not resume in the area of the discovery until a notice to proceed has been issued by RD. RD shall not issue the notice to proceed until it has determined that the appropriate local protocols and consulting parties have been consulted.

vii. Inadvertent discoveries on federal and tribal land shall follow the processes required by the federal or tribal entity.

4. Endangered Species – Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of Contractor, Contractor will immediately report this evidence to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the U.S. Fish and Wildlife Service.

5. Mitigation Measures – The following environmental mitigation measures are required on this Project: *[Insert mitigation measures from the Letter of Conditions here]*.

19.11 *Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)*

A. Where applicable, for contracts awarded by the Owner in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor will comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor will compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

19.12 *Debarment and Suspension (Executive Orders 12549 and 12689)*

A. A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

19.13 *Procurement of recovered materials*

A. The Contractor will comply with 2 CFR Part 200.322, “Procurement of recovered materials.”

19.14 *Domestic Preference*

A. **Build America, Buy America Act (BABAA).** All Iron and Steel Products, Manufactured Products, and Construction Materials used in this project must comply with the Build America, Buy America Act (BABAA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953. Aggregates such as stone, sand, or gravel do not apply to BABAA.

B. The following waivers apply to this Contract:

- 1.** ***BABAA De Minimis, Small Grants and Minor Components***
- 2.** ***[add project specific waivers as applicable].***

19.15 *Telecommunications and Video Surveillance Services or Equipment Prohibitions*

A. The telecommunication and video surveillance services and equipment prohibitions under 2 CFR 200.216 apply to this contract. This contract may not be used to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment is:

- 1. *Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such Entities).***
- 2. *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).***
- 3. *Telecommunications or video surveillance services provided by such entities or using such equipment.***
- 4. *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.***

