

the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

ARTICLE 7—OTHER WORK

Related Work at Site:

7.1. OWNER may perform other work related to the Project at the site by OWNER's own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to CONTRACTOR prior to starting any such other work, and (ii) CONTRACTOR may make a claim therefor as provided in Articles 11 and 12 if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

7.2. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

7.3. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure so to report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in such other work.

Coordination:

7.4. If OWNER contracts with others for the performance of other work on the Project at the site, the following will be set forth in Supplementary Conditions:

7.4.1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

7.4.2. the specific matters to be covered by such authority and responsibility will be itemized; and

7.4.3. the extent of such authority and responsibilities will be provided.

Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8—OWNER'S RESPONSIBILITIES

8.1. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.3. OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.4 and 14.13.

8.4. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents.

8.5. OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.10.

8.6. OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.7. OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8. In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed:

Shop Drawings, Change Orders and Payments:

9.7. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraphs 6.24 through 6.28 inclusive.

9.8. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

9.9. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

Determinations for Unit Prices:

9.10. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other and to ENGINEER written notice of intention to appeal from ENGINEER's decision and: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in Exhibit GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to ENGINEER's decision, unless otherwise agreed in writing by OWNER and CONTRACTOR. Such appeal will not be subject to the procedures of paragraph 9.11.

Decisions on Disputes:

9.11. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant

to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty days after the start of such occurrence or event unless ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to ENGINEER and the claimant within thirty days after receipt of the claimant's last submittal (unless ENGINEER allows additional time). ENGINEER will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. ENGINEER's written decision on such claim, dispute or other matter will be final and binding upon OWNER and CONTRACTOR unless: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within thirty days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty days of the date of such decision, unless otherwise agreed in writing by OWNER and CONTRACTOR.

9.12. When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 or 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.15) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter pursuant to Article 16.

9.13. Limitations on ENGINEER's Authority and Responsibilities:

9.13.1. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by ENGINEER shall create, impose or give rise to any duty owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

be valid if not submitted in accordance with this paragraph 11.2.

11.3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:

11.3.1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3, inclusive);

11.3.2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2);

11.3.3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 11.6).

Cost of the Work:

11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full-time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the

cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in paragraphs 11.4, 11.5, 11.6 and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

11.4.5. Supplemental costs including the following:

11.4.5.1. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

11.4.5.2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof—all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

11.4.5.4. Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

11.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

Cash Allowances:

11.8. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

11.8.1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

11.8.2. CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.

Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.9. Unit Price Work:

11.9.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with paragraph 9.10.

11.9.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

11.9.3. OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if:

11.9.3.1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

11.9.3.2. there is no corresponding adjustment with respect to any other item of Work; and

11.9.3.3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result

of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12—CHANGE OF CONTRACT TIMES

12.1. The Contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2. All time limits stated in the Contract Documents are of the essence of the Agreement.

12.3. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in paragraph 12.1. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.4. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. In no event shall OWNER be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii)

shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any surety or other party.

Correction or Removal of Defective Work:

13.11. If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all *defective* Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with Work that is not *defective*. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.12. Correction Period:

13.12.1. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be *defective*, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) correct such *defective* Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not *defective*, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the *defective* Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

13.12.2. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

13.12.3. Where *defective* Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 13.12, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

Acceptance of Defective Work:

13.13. If, instead of requiring correction or removal and replacement of *defective* Work, OWNER (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall

pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such *defective* Work (such costs to be approved by ENGINEER as to reasonableness). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

OWNER May Correct Defective Work:

13.14. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct *defective* Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors and ENGINEER and ENGINEER's Consultants access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's *defective* Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14—PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1. The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and

14.7.6. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens,

14.7.7. there are other items entitling OWNER to a set-off against the amount recommended, or

14.7.8. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.7.1 through 14.7.3 or paragraphs 15.2.1 through 15.2.4 inclusive;

but OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

Substantial Completion:

14.8. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said fourteen days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform

ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

14.9. OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

Partial Utilization:

14.10. Use by OWNER at OWNER's option of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.10.2. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

Final Inspection:

14.11. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all

15.2.1. If CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6);

15.2.2. If CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.3. If CONTRACTOR disregards the authority of ENGINEER; or

15.2.4. If CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety, if any,) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work such excess will be paid to CONTRACTOR. If such claims, costs, losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

15.3. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.4. Upon seven days' written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):

15.4.1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

15.4.2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

15.4.3. for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and

15.4.4. for reasonable expenses directly attributable to termination.

CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

CONTRACTOR May Stop Work or Terminate:

15.5. If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in paragraph 15.4. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within thirty days after it is submitted, or OWNER has failed for thirty days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven days' written notice to OWNER and ENGINEER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.5 are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

ARTICLE 16—DISPUTE RESOLUTION

If and to the extent that OWNER and CONTRACTOR have agreed on the method and procedure for resolving disputes between them that may arise under this Agreement, such dispute resolution method and procedure, if any, shall be as set forth in Exhibit GC-A, "Dispute Resolution Agreement," to be attached hereto and made a part hereof. If no such agreement on the method and procedure for resolving such disputes has been reached, and subject to the provisions of paragraphs 9.10, 9.11, and 9.12, OWNER and CONTRACTOR may exercise

**EXHIBIT GC-A to General Conditions of the
Agreement Between OWNER and CON-
TRACTOR Dated _____
For use with EJCDC No. 1910-8 (1990 ed.)**

DISPUTE RESOLUTION AGREEMENT

OWNER and CONTRACTOR hereby agree that Article 16 of the General Conditions to the Agreement between OWNER and CONTRACTOR is amended to include the following agreement of the parties:

16.1. All claims, disputes and other matters in question between OWNER and CONTRACTOR arising out of or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.15) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Article 16. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.

16.2. No demand for arbitration of any claim, dispute or other matter that is required to be referred to ENGINEER initially for decision in accordance with paragraph 9.11 will be made until the earlier of (a) the date on which ENGINEER has rendered a written decision or (b) the thirty-first day after the parties have presented their evidence to ENGINEER if a written decision has not been rendered by ENGINEER before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty days after the date on which ENGINEER has rendered a written decision in respect thereof in accordance with paragraph 9.11; and the failure to demand arbitration within said thirty days' period will result in ENGINEER's decision being final and binding upon OWNER and CONTRACTOR. If ENGINEER renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of ENGINEER rendered in accordance with paragraph 9.10 will be made later than ten days after the party making such demand has delivered written notice of intention to appeal as provided in paragraph 9.10.

16.3. Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the

American Arbitration Association, and a copy will be sent to ENGINEER for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 16.2 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

16.4. Except as provided in paragraph 16.5 below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including ENGINEER, ENGINEER's Consultant and the officers, directors, agents, employees or consultants of any of them) who is not a party to this contract unless:

16.4.1. the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and

16.4.2. such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and

16.4.3. the written consent of the other person or entity sought to be included and of OWNER and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

16.5. Notwithstanding paragraph 16.4 if a claim, dispute or other matter in question between OWNER and CONTRACTOR involves the Work of a Subcontractor, either OWNER or CONTRACTOR may join such Subcontractor as a party to the arbitration between OWNER and CONTRACTOR hereunder. CONTRACTOR shall include in all subcontracts required by paragraph 6.11 a specific provision whereby the Subcontractor consents to being joined in an arbitration between OWNER and CONTRACTOR involving the Work of such Subcontractor. Nothing in this paragraph 16.5 nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of Subcontractor and against OWNER, ENGINEER or ENGINEER's Consultants that does not otherwise exist.

16.6. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

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SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8) (1990 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect. To the extent of a conflict between the standard General Conditions and these Supplementary Conditions, these Supplementary Conditions Control.

SC-1 The terms used in the Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1990 Edition) have the meanings assigned to them in the General Conditions.

SC-2.1 Delete Paragraph 2.1 of the General Conditions in its entirety and insert the following in its place:

When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds and insurance as CONTRACTOR may be required to furnish in accordance with Article 5, as amended by these Supplementary Conditions.

SC-2.7 Delete Paragraph 2.7 of the General Conditions in its entirety.

SC-4.2 MTEC Companies, Inc. has prepared a report (Project No. MT-2011-004-018 dated April 30, 2015) entitled "**Report of Geotechnical Evaluation, Water and Waste Water Treatment Plants, Huffmeister Senior Facilities**" that addresses the subsurface conditions at or adjacent to the project site. This report may be examined in the office of the Engineer.

Contractor may not rely upon the data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

Copies of such subsurface reports will be made available by Owner to Contractor on request. Those reports are not part of the Contract Documents and are not a warranty of surface or subsurface conditions. Contractor is responsible for any interpretation or conclusion drawn from any "technical data" contained therein. Contractor acknowledges that Owner and Engineer disclaim any responsibility for the accuracy, true location, and extent of the soil, surface, and subsurface investigations that have been prepared by others and disclaim responsibility for Contractor's interpretation of or conclusions or opinions drawn from such reports, e.g., without limitation, projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water. Contractor is expected to examine the site and such reports and then decide for itself the character of the materials to be encountered.

Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof or for Contractor's interpretation of or conclusions or opinions drawn from such information and data. The Contractor is advised to coordinate closely with Engineer and Operator prior to the commencement of any underground construction activities. Such information and data is not a part of the Contract Documents and is not a warranty of subsurface conditions.

SC-4.4 Delete Paragraph 4.4 of the General Conditions in its entirety and insert the following in its place:

OWNER will supply construction staking to establish both reference points and layout for the project. CONTRACTOR shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. CONTRACTOR shall give a minimum of two working days' notice to the survey company employed by the OWNER when requesting staking services and a minimum of 4 working hours' notice to the survey company employed by the OWNER for cancellation of scheduled staking services. The CONTRACTOR will pay for any re-staking charges due to CONTRACTOR'S lack of protection for established survey points, and for any charges resulting from CONTRACTOR'S improper cancellation of scheduled staking services. The OWNER shall have the option to deduct and withhold the amount of any re-staking charges and charges for improper cancellation of scheduled staking services from any monies due to the CONTRACTOR or recover such amount from the CONTRACTOR or the CONTRACTOR'S surety at the CONTRACTOR'S expense.

SC-4.5.4 Delete Paragraph 4.5.4 of the General Conditions in their entirety.

SC-4.5.5 Delete Paragraph 4.5.5 of the General Conditions in their entirety.

SC-5.1 Delete Paragraph 5.1 of the General Conditions in its entirety and insert the following in its place:

The successful bidder must submit, within 7 days after the date of the Owner's Notice of Award, Payment and Performance Bonds, as well as a Maintenance Bond (if so required by these Supplementary Conditions) on the forms furnished, in the amount of 100% of the total contract price. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by laws or regulations or the Contract Documents. The surety company issuing Payment and Performance Bonds, and a Maintenance Bond (if so required by these Supplementary Conditions), must (a) be authorized to do business in the State of Texas as evidenced by licensing through the State Board of Insurance; (b) be authorized to issue Payment and Performance Bonds, and Maintenance Bonds (if so required by these Supplementary Conditions), in the amount required for the contract as indicated by the records of the State Board of Insurance; (c) for contracts over \$100,000, the surety must also hold a certificate of authority from the United States Secretary of Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law ("Certificate of Authority") or have obtained reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a Certificate of Authority; and (d) have a rating of at least "B+" in the current Best's Key Rating Guide or, if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570.

If the surety company does not have a rating in Best's Key Rating Guide and is eligible to participate in the surety bond program of the Small Business Administration, the Payment and Performance Bonds, and the Maintenance Bond (if so required by these Supplementary Conditions) issued by such surety, in addition to the criteria set out above, also must meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury with respect to Performance and Payment Bonds, and Maintenance Bonds (if so required by these Supplementary Conditions), for federal jobs, including specifically the rules related to the underwritten limitation.

The person executing the Payment and Performance Bonds, and the Maintenance Bond (if so required by these Supplementary Conditions), must be licensed as a Texas Local Recording Agent through the State Board of Insurance as required by the laws of the State of Texas and such licensing must be recorded in the files of the State Board of Insurance.

The person executing the Payment and Performance Bonds, and the Maintenance Bond (if so required by these Supplementary Conditions), must hold an appointment from the surety company to execute Payment and Performance Bonds, and the Maintenance Bond (if so required by these Supplementary Conditions), and bind such surety, and such appointment must be recorded in the office of the State Board of Insurance.

SC-5.3.1 Delete Paragraph 5.3.1 of the General Conditions in its entirety and insert the following in its place:

All Bonds and insurance required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

SC-5.3.2 Delete Paragraph 5.3.2 of the General Conditions in its entirety and insert the following in its place:

CONTRACTOR shall deliver to OWNER, within 7 days after the date of Owner's Notice of Award, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any additional insured) which CONTRACTOR is required to purchase and maintain in accordance with Article 5.

SC-5.4 The limits of liability for the insurance required by Paragraph 5.4 of the General Conditions shall provide the following coverages for not less than the following amounts or greater where required by Laws and Regulations:

5.4.1 and 5.4.2 Workers' Compensation etc. under Paragraphs 5.4.1 and 5.4.2 of the General Conditions:

(1) State:	Statutory
(2) Applicable Federal:	Statutory
(3) Employers Liability:	Accident \$500,000 each accident; Disease \$500,000 each employee; Disease \$500,000 policy limit

CONTRACTOR shall provide Waiver of Subrogation on Worker's Compensation to OWNER and ENGINEER.

5.4.3, 5.4.4, and 5.4.5 Commercial General Liability Insurance under Paragraphs 5.4.3 through 5.4.5 of the General Conditions, which shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of CONTRACTOR (CONTRACTOR's policies to be primary in all cases):

- (1) General Aggregate:
(Except Products-Completed Operations) \$2,000,000
- (2) Products-Completed Operations Aggregate: \$1,000,000
- (3) Personal and Advertising Injury with
Contractual and Employment Exclusions
Deleted: (Per person/Organization) \$1,000,000

- | | |
|---|-------------|
| (4) Each Occurrence: (Bodily Injury and Property Damage) | \$1,000,000 |
| (5) Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where applicable (per occurrence). \$1,000,000 | |
| (6) Umbrella Liability (per occurrence): | |
| General Aggregate | \$2,000,000 |
| Each Occurrence | \$1,000,000 |
| (7) Broad Form Property Damage Liability, Including Completed Operations (per occurrence): | \$1,000,000 |
| (8) Independent Contractors Coverage (per occurrence) | \$1,000,000 |

5.4.6 Automobile Liability:

Combined Single Limit (Bodily Injury and Property Damage):
\$1,000,000 Each Accident

SC-5.4.1 Add the following language to the end of Paragraph 5.4.1 of the General Conditions:

Workers' Compensation Insurance Coverage

(A) Definitions

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission (the "TWCC"), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the CONTRACTOR's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Section 406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the CONTRACTOR has undertaken to perform on the project, regardless of whether that person contracted directly with the CONTRACTOR and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- (B) The CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amount and filing of any coverage agreement, which meets the

statutory requirements of Texas Labor Code, §401.011 (44) for all employees of the CONTRACTOR providing services on the project, for the duration of the project.

- (C) The CONTRACTOR must provide a certificate of coverage to the OWNER prior to being awarded the contract.
- (D) If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with the OWNER, showing that the coverage has been extended.
- (E) The CONTRACTOR shall obtain from each person providing services on the project, and provide to the OWNER:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so that the OWNER will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (F) The CONTRACTOR shall retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (G) The CONTRACTOR shall notify the OWNER in writing by certified mail or personal delivery, within 10 days after the CONTRACTOR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (H) The CONTRACTOR shall post on each project site a notice, in the text, form and manner prescribed by the TWCC, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage.
- (I) The CONTRACTOR shall contractually require each person with whom it contracts to provide service on a project to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code §401.011 (44) for all its employees providing services on the project, for the duration of the project;
 - (2) provide to the CONTRACTOR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project.
 - (3) provide the CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the CONTRACTOR:

- (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of the coverage period, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the OWNER in writing by certified mail or personal delivery, within 10 days after the person knew or should know, of any change that materially affects the provision of coverage of any person providing service on the project; and
 - (7) contractually require each other person with whom it contracts to perform as required by paragraphs (1) - (7), with the certificate of coverage to be provided to the person for whom they are providing services.
- (J) By signing this contract or providing or causing to be provided a certificate of coverage, the CONTRACTOR is representing to the OWNER that all employees of the CONTRACTOR who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the TWCC's Division of Self-Insurance Regulation. Providing false or misleading information may subject the CONTRACTOR to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (K) The CONTRACTOR's failure to comply with any of these provisions is a breach of contract by the CONTRACTOR which entitles the OWNER to declare the contract void if the CONTRACTOR does not remedy the breach within ten days after receipt of notice of breach from the OWNER.

SC-5.4.7 Add the following entities as additional insureds on the policy and any endorsements:

Nantucket Housing, LLC
Brown & Gay Engineers, Inc.

SC-5.4.8 Additional insurance required by the OWNER includes:

Endorsement CG 20-10-10-93, Form B to the benefit of OWNER, aggregate limits of insurance per project or its practical equivalent.

Amend the last Paragraph of this endorsement to read as follows:

WHO IS INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your operations performed for that insured.

Endorsement CG 20-07-10-93 to the benefit of ENGINEER, aggregate limits of insurance per project or its practical equivalent.

Amend Paragraph A of this endorsement to read as follows:

WHO IS INSURED (Section II) is amended to include as an insured any engineer or surveyor with respect to liability arising out of your premises or operations performed.

SC-5.4.9 Delete entire Paragraph 5.4.9 of the General Conditions in its entirety and insert the following in its place:

include products/completed operations insurance;

SC-5.4.10 The Contractual Liability coverage required by Paragraph 5.4.10 of the General Conditions shall provide coverage for not less than the following amounts:

- | | |
|---|-------------|
| (1) General Aggregate | \$1,000,000 |
| (2) Each Occurrence (Bodily Injury and Property Damage) | \$1,000,000 |

SC-5.4.11 Delete paragraph 5.4.11 of the General Conditions in its entirety and insert the following in its place:

contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given by insurance company via certified mail to OWNER, ENGINEER, and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to Paragraph 5.3.2 will so provide);

SC-5.4.14 Add a new Paragraph immediately after Paragraph 5.4.13 of the General Conditions which is to read as follows:

Claims Against Aggregate. OWNER must be notified immediately by insurance company via certified mail upon knowledge of possible damage claims that might cause a reduction below seventy-five percent (75%) of any aggregate limit of any policy.

SC-5.6 Amend the first sentence of Paragraph 5.6 of the General Conditions to read as follows:

CONTRACTOR shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

and as so amended the other Paragraphs under Paragraph 5.6 remain in effect.

Add the following language at the end of Paragraph 5.6 of the General Conditions:

The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this Paragraph 5.6 shall comply with the requirements of Paragraph 5.8 of the General Conditions.

SC-5.6.1 Delete Paragraph 5.6.1 of the General Conditions in its entirety and insert the following in its place:

include the interests of OWNER, ENGINEER, ENGINEER'S Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

SC-5.7 Delete Paragraph 5.7 of the General Conditions in its entirety and insert the following in its place:

CONTRACTOR shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

SC-5.8 Delete Paragraph 5.8 of the General Conditions in its entirety and insert the following in its place:

All policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by CONTRACTOR in accordance with Paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days' prior written notice by certified mail from insurance company has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.11.

SC-5.9 Delete Paragraph 5.9 of the General Conditions in its entirety and insert the following in its place:

OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interests of the CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts. The risk of loss within such deductible amount, will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

SC-5.10 Delete Paragraph 5.10 of the General Conditions in its entirety.

SC-5.11 Amend the heading for Paragraph 5.11 of the General Conditions to read as follows:

Waiver and Release of Rights:

SC-5.11.1 Delete Paragraph 5.11.1 of the General Conditions in its entirety and insert the following in its place:

All policies purchased in accordance with Paragraphs 5.6 and 5.7 will protect OWNER, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insured or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. CONTRACTOR waives all rights against OWNER, ENGINEER, ENGINEER's Consultants, and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance; and, in addition, waives all such rights against ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused.

SC-5.11.2 Amend the first sentence of Paragraph 5.11.2 of the General Conditions to read as follows:

In addition, CONTRACTOR waives all rights against OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them for:

and as so amended the other Paragraphs under Paragraph 5.11.2 remain in effect.

Amend the last sentence of Paragraph 5.11.2 of the General Conditions to read as follows:

Any insurance policy maintained by CONTRACTOR covering any loss, damage or consequential loss referred to in this paragraph 5.11.2 shall contain provisions to the effect that in the event of payment of any such loss, damage or consequential loss the insurers will have no rights of recovery against any of OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them.

SC-5.11.2.1 Delete Paragraph 5.11.2.1 of the General Conditions in its entirety and insert the following in its place:

loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to any property or the Work caused by, arising out of or resulting from fire or other peril, whether or not insured; and

SC-5.12 Delete Paragraph 5.12 of the General Conditions in its entirety and insert the following in its place:

Any insured loss under the policies of insurance required by Paragraphs 5.6 and 5.7 will be made payable directly to each of the insureds and additional insureds.

SC-5.13 Delete Paragraph 5.13 of the General Conditions in its entirety.

SC-5.14 Delete Paragraph 5.14 of the General Conditions in its entirety and insert the following in its place:

If OWNER has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the CONTRACTOR in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the OWNER party shall so notify the CONTRACTOR in writing within ten days after receipt of the certificates (or other evidence requested) required by Paragraph 2.7. CONTRACTOR shall provide to the OWNER such additional information in respect of insurance provided as the OWNER may reasonably request. If CONTRACTOR does not purchase or maintain all of the Bonds and insurance required by the Contract Documents, CONTRACTOR shall notify OWNER in writing of such failure to purchase prior to execution of the Contract, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the OWNER may elect to obtain equivalent Bonds or insurance to protect OWNER's interests at the expense of the CONTRACTOR who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

SC-5.15 Delete Paragraph 5.15 of the General Conditions in its entirety.

SC-6.1 Delete the first sentence of Paragraph 6.1 and substitute the following in lieu thereof:

Contractor shall supervise and direct the Work, using the Contractor's best skill and attention, in a good and workmanlike manner and in the best and most expeditious and economical manner consistent with the interests of the Owner, shall exercise the degree of care, skill and diligence in the performance of the Work in accordance with and consistent with industry standards for similar circumstances, shall utilize its best skill, efforts and judgment in furthering the interests of Owner, and shall furnish efficient business administration and supervision (the Contractor's "Standard of Care").

SC-6.3 Amend the first sentence of Paragraph 6.3 of the General Conditions to read as follows:

CONTRACTOR shall provide competent, suitably qualified personnel to construct the Work as required by the Contract Documents.

and as so amended Paragraph 6.3 remains in effect.

SC-6.11 Amend Paragraph 6.11 to include the following:

Contractor shall furnish satisfactory evidence that all obligations for labor and materials have been satisfied in the form of an Affidavit of Bills Paid as set forth in these Contract Documents. If Contractor fails to provide an affidavit as to any laborer or supplier, then Owner may, at Owner's option, pay directly any unpaid sums otherwise due to Contractor under this Contract or withhold from Contractor's unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payments to Contractor shall be resumed in full in accordance with the terms of this Contract. In no event shall the provisions of this paragraph be construed to impose any obligation upon Owner by either Contractor or its Surety.

SC-6.12 Delete Paragraph 6.12 of the General Conditions in its entirety and insert the following in its place:

INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION

- (A) Contractor shall not furnish or provide to Owner any Materials or Work that infringes a third party's intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like). Contractor shall not disclose or provide to Owner any information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas which Contractor does not own or otherwise have the right to disclose or provide to Owner.
- (B) Contractor represents and warrants that the Materials and the Work shall be free from third party claims of ownership and that Owner's right to own, use, or otherwise disclose such Materials and Work shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).
- (C) Contractor represents and warrants to Owner that all information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas disclosed or provided to Owner shall be free from third party claims of ownership and that Owner's right to own, use or otherwise disclose such information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).
- (D) Contractor represents and warrants that all processes or methods utilized by Contractor to provide its services to Owner are free from infringement of third party intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like) and that all products provided by Contractor to Owner are free from third party claims of infringement of intellectual property rights, including allegations that the product infringes the claims of the United States process patent in violation of the Process Patents Amendment Act of 1988. Contractor shall cooperate fully and promptly with Owner with respect to any notice of infringement or request for disclosure or response to a request for disclosure generated or received by Owner in connection with Contractor's Work pursuant to the Process Patents Amendment Act of 1988. To the extent that Contractor obtains products from third parties which it intends to provide to Owner, Contractor shall obtain agreements from Contractor's vendors to cooperate in connection with requests for disclosure generated or received by Owner pursuant to the Process Patents Amendment Act of 1988.
- (E) **CONTRACTOR SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ALL LIABILITY, CLAIMS, DEMANDS AND CAUSES OF ACTION BROUGHT BY THIRD PARTIES (AND ALL COSTS, EXPENSES, DAMAGES, LIABILITIES OR JUDGMENTS SUSTAINED OR INCURRED**

BY OWNER IN CONNECTION THEREWITH, INCLUDING THE COSTS OF INVESTIGATION AND REASONABLE ATTORNEYS FEES) ARISING OUT OF OR RELATING TO: (I) CONTRACTORS BREACH OF ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING INTELLECTUAL PROPERTY RIGHTS; (II) ALLEGATIONS THAT OWNER, BY USE OF THE MATERIALS, EQUIPMENT, OR THE WORK, INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (WHETHER IT BE CLAIMS OF IMPROPER USE OF CONFIDENTIAL INFORMATION, PATENT INFRINGEMENT, COPYRIGHT INFRINGEMENT, TRADEMARK INFRINGEMENT OR THE LIKE); (III) ALLEGATIONS THAT A THIRD PARTY OWNS INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DESCRIBED OR PROVIDED BY CONTRACTOR TO OWNER; (IV) ALLEGATIONS THAT OWNER'S OWNERSHIP OR USE OF INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DISCLOSED OR PROVIDED BY CONTRACTOR TO OWNER INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; (V) ALLEGATIONS THAT THE PROCESSES UTILIZED BY CONTRACTOR IN PROVIDING ITS SERVICES TO OWNER INFRINGE THIRD PARTY INTELLECTUAL PROPERTY RIGHTS (INCLUDING A VIOLATION OF THE PROCESS PATENTS AMENDMENT ACT OF 1988); OR (VI) THE COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES INCURRED BY OWNER IN ENFORCING THE INTELLECTUAL PROPERTY INDEMNITY INCLUDED IN THIS PARAGRAPH. THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL APPLY EVEN IF THE THIRD PARTY ALLEGES OR ESTABLISHES THAT OWNER WAS PARTIALLY NEGLIGENT OR OTHERWISE AT FAULT (E.G., WITHOUT LIMITATION, THAT OWNER WAS NEGLIGENT IN RETAINING CONTRACTOR'S SERVICES AND ACCEPTING MATERIALS, EQUIPMENT, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS FROM CONTRACTOR, OR THAT OWNER WAS NEGLIGENT IN FAILING TO ASCERTAIN WHETHER THE MATERIALS, EQUIPMENT, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS INFRINGED THE RIGHTS OF THIRD PARTIES). IF USE OF ANY PART OF SUCH EQUIPMENT, MATERIAL OR PROCESS IS LIMITED OR PROHIBITED, CONTRACTOR SHALL, AT ITS SOLE EXPENSE, PROCURE THE NECESSARY LICENSES TO USE THE INFRINGING EQUIPMENT, MATERIAL OR PROCESS, OR THE OWNER MAY, AT ITS OPTION, (1) ALLOW THE CONTRACTOR, WITH THE OWNER'S PRIOR WRITTEN APPROVAL, TO REPLACE SAME WITH SUBSTANTIALLY EQUAL BUT NOT INFRINGING EQUIPMENT, MATERIALS OR PROCESSES, OR MODIFY SAME TO BE NONINFRINGING; PROVIDED THAT ANY SUCH SUBSTITUTE OR MODIFIED EQUIPMENT, MATERIALS OR PROCESS SHALL MEET ALL THE REQUIREMENTS AND BE SUBJECT TO ALL THE PROVISIONS OF THIS CONTRACT, PROVIDED THAT SUCH REPLACEMENT OR MODIFICATIONS SHALL NOT MODIFY OR RELIEVE THE CONTRACTOR OF ITS OBLIGATIONS UNDER THIS CONTRACT; OR (2) OWNER MAY CANCEL THE CONTRACT.

SC-6.13 Add the following language at the end of Paragraph 6.13 of the General Conditions:

The Construction Drawings and Special Specifications include a Storm Water Pollution Prevention Plan in accordance with TCEQ requirements. The Contractor shall be responsible for obtaining permit coverage under the TCEQ's Construction Storm Water General Permit for all phases of project construction, and shall be further responsible for all activities necessary to initially meet and thereafter continuously maintain strict compliance with such permit as well as all applicable rules of TCEQ relating to Storm Water discharges (including, but not limited to, implementing the best management practices set forth in the Storm Water Pollution Prevention Plan for this project.

SC-6.14.3 Add Paragraph 6.14.3 as follows:

Contractor shall at all times observe and comply with federal, state, and local laws, ordinances, and regulations which in any manner affect this Contract of the Work; **INDEMNIFY AND SAVE OWNER HARMLESS AGAINST ANY CLAIM ARISING FROM VIOLATION OF ANY SUCH LAWS OR ORDINANCES WHETHER BY CONTRACTOR, ITS EMPLOYEES, AGENTS, PERMITTEES, OR LICENSEES**; and notify Owner promptly upon discovery of any instance of failure to comply with applicable laws, ordinances, and regulations.

SC-6.15 Add the following language at the end of Paragraph 6.15 of the General Conditions:

Contractor shall pay, when due, all taxes, fees, and contributions imposed by reason of prosecution of the Work **AND SHALL PROTECT, INDEMNIFY, AND HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM FAILURE TO MAKE TIMELY PAYMENT OF THESE AMOUNTS AND COMPLY WITH THE REPORTING, FILING, OR OTHER PROCEDURAL REQUIREMENTS WITH RESPECT TO PAYMENT.** Interest, penalties, or other liabilities arising from failure to make payments shall not be reimbursed to Contractor.

SC-6.20 Amend Paragraph 6.20 to include the following:

Contractor shall develop a written safety program, including provisions for trench safety, applicable to the Premises and to the Work, and enforce the safety program to the Work at all times. Further, Contractor shall comply with all applicable laws and regulations, including but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Contractor's employees. Contractor shall have complete and sole responsibility for protecting the safety and health of its employees and subcontractors and all other persons.

Contractor shall notify Owner, by telephone with prompt confirmation in writing, of lost time injuries and fatalities that occur on the Premises in connection with any work being performed under this Contract and shall provide Owner with reports of injuries and fatalities as Owner shall deem necessary, including, but not limited to, copies of all reports or other documents filed or provided in connection with injuries or fatalities to Surety or Contractor's insurers or the State of Texas.

No provision on this paragraph shall be interpreted as enlarging any legal duty the Owner may have to Contractor or to Contractor's agents, employees, subcontractors, or third parties, or as altering the status of Contractor as an independent contractor.

The Contractor shall include sufficient compensation in his bid for trench and project safety systems in accordance with all applicable local, state, and federal law, including, but not limited to, OSHA and all proposed OSHA rules and regulations published in the Federal Register related to trench and project safety systems if such are more stringent than rules and regulations of official record. All trench and project safety systems shall be designed by the Contractor's Registered Professional Engineer. The Contractor's Registered Professional Engineer shall be registered in the State of Texas.

The Construction Drawings, prepared by Brown & Gay Engineers, Inc., do not extend to or include designs or systems pertaining to the safety of the Contractor or its employees, agents or representatives in the performance of the Work. The seal of Brown & Gay, Inc.'s Registered Professional Engineer(s) on the BID DOCUMENTS AND SPECIFICATIONS OR CONSTRUCTION DRAWINGS or any written explanatory matter thereof, as prepared by Brown & Gay Engineers, Inc. does not extend to any such trench or project safety systems that may be necessary in the Contractor's completion of the Work.

THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER AND ENGINEER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS AND AGENTS FROM ANY AND ALL DAMAGES, COSTS (INCLUDING WITHOUT LIMITATIONS, LEGAL FEES, COURT COSTS, AND THE COST OF INVESTIGATION), JUDGMENTS OR CLAIMS BY ANYONE FOR PROPERTY DAMAGE, INJURY, OR DEATH TO PERSONS RESULTING FROM THE COLLAPSE OR FAILURE OF TRENCHES CONSTRUCTED UNDER THIS CONTRACT OR THE FAILURE TO PROVIDE SAFETY EQUIPMENT OR SAFETY SYSTEMS UNDER THIS CONTRACT.

CONTRACTOR ACKNOWLEDGES AND AGREES THAT THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION EXTENDS TO AND COVERS THE OWNER AND ENGINEER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, OR AGENTS NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, OR GROSS), EITHER BY ACT OR OMISSION, WITH RESPECT TO THE CONTRACTOR'S SAFETY EQUIPMENT OR SYSTEMS, OR THE LACK THEREOF, INCLUDING BUT NOT LIMITED TO INSPECTIONS, FAILURE TO ISSUE STOP WORK ORDERS, AND THE HIRING OF THE CONTRACTOR.

THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION EXTENDS TO THE OWNER AND ENGINEER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, OR AGENTS NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, OR GROSS) WHETHER SUCH NEGLIGENT ACTION OR OMISSION IS SOLE OR CONCURRENT WITH CONTRACTOR AND/OR OTHERS. THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL BE SUPPORTED BY CONTRACTUAL LIABILITY INSURANCE AS SPECIFIED IN THE GENERAL AND SUPPLEMENTARY CONDITIONS OF THE CONTRACT.

SC-6.31 Delete Paragraph 6.31 of the General Conditions in its entirety and insert the following in its place:

To the maximum extent allowed by law, the Contractor shall indemnify and hold harmless the Owner, its board, directors, officers, employees and agents, Engineer and its consultants, directors, officers, agents and employees and Developer and its directors, officers, agents and employees (collectively, the "Indemnitees"), from and against any and all claims, demands, suits, causes of action, settlements, liabilities, costs, expenses, fines, and judgments (including, without limitation, reasonable and necessary court costs, experts' fees and attorney's fees) (collectively, "Losses"), whether arising in equity, at common law, or by statute, including without limitation the Texas Deceptive Trade Practices Act (as amended) or similar statute of other jurisdictions, or under the law of contracts, torts (including, without limitation, negligence and strict liability without regard to fault) or property, of every kind or character (including, without limitation, claims for property damage, personal injury (including without limitation emotional distress), and economic loss), arising in favor of or brought by any of the Contractor's employees, agents, Subcontractors, Suppliers or representatives, or by any governmental agency or any other third party, based upon, in connection with, relating to or arising out of the Work, the Contractor's failure to comply with the Contract Documents, or the Contractor's actions or inactions under the Contract Documents, including without limitation any failure to pay taxes or failure to comply with any applicable law, and **EVEN IF ANY SUCH LOSSES ARE DUE IN PART TO ANY INDEMNITEES' SOLE OR CONCURRENT NEGLIGENCE OR OTHER FAULT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF STATUTE, OR STRICT LIABILITY WITHOUT REGARD TO FAULT.**

The foregoing indemnification obligation shall apply regardless of the amount of insurance coverage held by the Contractor, including without limitation any such coverage under any worker's compensation act, disability act, or other act or law which would limit the amount or type of damages, compensation, or benefits payable by or for the Contractor, and shall not be limited by any insurance carried or provided by the Contractor in accordance with the Contract Documents or otherwise.

Contractor shall and does hereby waive all causes of action it has for, and releases and forever discharges the Indemnitees from, Losses for injuries (including death) to any person or

damage to or destruction of any property sustained or alleged to have been sustained in connection with or arising out of or incidental to the Work.

Contractor shall promptly settle or cause the settlement of all Losses for which it is responsible pursuant to the Contract Documents. Upon becoming aware of facts which may constitute any Loss, Contractor shall immediately notify the Owner of the full particulars thereof, and the Owner may elect, by notice to Contractor, to have its representative accompany Contractor's representative in making settlement of the same.

Contractor agrees and covenants that it will not contest the validity or enforceability of any indemnity or exculpatory provision of this Contract on the basis that it has no notice or knowledge of any such provision or that any such provision is not "conspicuous."

Other provisions in the Contract Documents containing indemnities shall be deemed to be cumulative of and to operate independently of the indemnities provided above such that all indemnities provided in the Contract Documents shall be construed to grant indemnity to the Indemnitees to the fullest extent possible.

SC-6.32 Delete Paragraph 6.32 of the General Conditions in its entirety.

SC-7.1 Related Work at the Site. The following projects either have or will be contracted for in the vicinity of the proposed construction in connection with this contract:

- (1) Meadows at Cypress Creek Wastewater Treatment Plant
- (2) Meadows at Cypress Creek Townhomes

SC-8.5 and SC-8.10 Delete Paragraph 8.5 and 8.10 of the General Conditions in their entirety.

SC-9.3 Add the following language at the end of Paragraph 9.3 of the General Conditions:

The ENGINEER will provide a project representative for this project whose responsibilities are outlined in the attached Exhibit SC-A.

In addition to inspection by the OWNER and ENGINEER, the work under this contract will be subject to inspection by Harris County, the Harris County Flood Control District, and the Texas Commission on Environmental Quality.

SC-9.10 and SC-9.11 Insert the following:

In subclause (i) of the second sentence of Paragraph 9.10 of the General Conditions and in subclause (i) of the fifth sentence of Paragraph 9.11 of the General Conditions, delete the phrase "an appeal from Engineer's decision is taken within the time limits and in accordance with" and in each such case substitute in lieu thereof the following:

"either the Owner or the Contractor initiates"

SC-12.2 Add the following language at the end of Paragraph 12.2 of the General Conditions:

The CONTRACTOR and the OWNER agree that time is of the essence of this contract. The CONTRACTOR and the OWNER agree that a breach of this CONTRACT by failure to complete the Work in the specified time will cause harm to the OWNER, and further agree that the harm the OWNER would sustain and the actual measure of damages the OWNER would incur from the breach are incapable or very difficult of ascertainment. Therefore, the CONTRACTOR and the OWNER agree that for each and every day the work or any portion thereof shall remain uncompleted after the expiration of the time limit set in the Contract, or as extended under the provisions for Extension of Time in Article 12 of this Contract, CONTRACTOR shall be liable to OWNER for liquidated damages in the sum stipulated in the Standard Form of Agreement between OWNER and CONTRACTOR, which sum the parties agree is a reasonable forecast of the damages the OWNER will sustain per day that the work remains uncompleted and in no

way constitutes a penalty. The OWNER shall have the option to deduct and withhold the amount of any liquidated damages from any monies that the OWNER owes the CONTRACTOR or to recover such amount from the CONTRACTOR or the Sureties on the CONTRACTOR'S bond at the CONTRACTOR'S expense.

SC-13.4 Add the following language at the end of Paragraph 13.4 of the General Conditions:

CONTRACTOR shall give a minimum of two working days' notice to the independent testing laboratory employed by the OWNER when requesting testing services and a minimum of 4 working hours' notice to the independent testing laboratory employed by the OWNER for cancellation of scheduled testing services. CONTRACTOR will pay all charges for retesting required due to CONTRACTOR'S failure to pass initial tests, and for charges resulting from CONTRACTOR'S improper cancellation of scheduled testing services. The OWNER shall have the option to deduct and withhold the amount of any retesting charges and charges for improper cancellation of scheduled testing services from any monies due to the CONTRACTOR or recover such amount from the CONTRACTOR or the CONTRACTOR'S Surety at the CONTRACTOR'S expense.

SC-13.12 Amend Paragraph 13.12 of the General Conditions to include the following:

SC-13.12.1, 2, and 3 Amend Paragraphs 13.12.1, 2, and 3 of the General Conditions to substitute the words "final completion" for the words "substantial completion" whenever the words "substantial completion" are used and as so amend these Paragraphs remain in effect.

The one-year correction period will commence at the time that the project is at the final completion stage and has been accepted by Harris County, the Harris County Flood Control District, and the Texas Commission on Environmental Quality, the ENGINEER, and the OWNER.

SC-14.2 Amend Paragraph 14.2 of the General Conditions to include the following:

The CONTRACTOR shall make arrangements to meet the ENGINEER'S Project Representative at the job site to determine the status of work completed for the project prior to the due date for submittal of each monthly application for payment. The due dates for monthly applications for payment will be determined at the Pre-construction Conference or outlined in the Notice to Proceed. The status of work completed as agreed upon between the ENGINEER'S Project Representative and the CONTRACTOR will be the basis for the application for payment submitted to the ENGINEER'S Project Manager. Deviations from the agreed status of work completed in the application for payment may result in processing delays or disapproval of the estimate. In addition, payment may be delayed until the next payment cycle on applications for payment received after the prescribed submittal due dates. If the CONTRACTOR believes that an oversight was made in the agreed status of work completed, he should contact the ENGINEER'S Project Manager prior to submitting an application for payment that is not in one hundred percent compliance with the agreed status of work completed. Unless specific approval is granted by the Owner, payment will not be approved for materials delivered and stored at the site but not incorporated in the work.

An amount equal to ten percent of the amount of each monthly estimate will be retained by the OWNER. CONTRACTOR shall not include payment for retainage without prior approval of the ENGINEER'S Project Manager.

All monthly applications for payment shall Waiver and Lien Release forms and all required Storm Water Pollution Prevention Plan inspection and maintenance reports. Absence of any of these forms or any required Storm Water Pollution Prevention Plan inspection and maintenance reports from a monthly application for payment may result in processing delays or disapproval of the estimate.

SC-14.4 Delete Paragraph 14.4 in entirety and insert the following paragraph:

ENGINEER will, within fifteen days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Thirty days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

SC-14.8 and 14.9 Delete Paragraphs 14.8 and 14.9 of the General Conditions which address Substantial Completion in their entirety.

SC-14.10.2 Delete Paragraph 14.10.2 of the General Conditions in its entirety.

SC-14.11 Amend Paragraph 14.11 of the General Conditions to include the following:

Final inspections will also be conducted by the governments entities listed in SC-9.3. It is intended that all inspections by governmental entities pass on the dates of the inspections. CONTRACTOR shall have crews ready and prepared to remedy any and all problems or deficiencies on the dates of the inspections. The CONTRACTOR will be notified by the ENGINEER as to the dates and times of the inspections immediately upon their being scheduled by each governmental entity.

SC-14.12 Amend Paragraph 14.12 of the General Conditions to include the following:

The final application for payment shall include consent of surety to release final payment, affidavit of bills paid, waiver and release of liens, contractors warranty, any required O&M manuals, any required Storm Water Pollution Prevention Plan inspection and maintenance reports and record drawings. The final application for payment shall not be submitted for approval until the satisfactory completion of all testing and inspection requirements.

SC-15.2 Delete Paragraph 15.2 of the General Conditions in its entirety and insert the following in its place:

Upon occurrence of any one or more of the following events:

15.2.1 if CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6) seven (7) days after written notification from the OWNER, or the ENGINEER;

15.2.2 if CONTRACTOR continues to disregard Laws and Regulations of any public body having jurisdiction seven (7) days after written notification from the OWNER, ENGINEER, or said public body;

15.2.3 if CONTRACTOR continues to disregard the authority of ENGINEER, or if the CONTRACTOR fails to comply with the orders of the ENGINEER, when such orders are consistent with the Contract Documents, seven (7) days after written notification from the OWNER, or the ENGINEER; or

15.2.4 if CONTRACTOR abandons and fails or refuses to resume work or if CONTRACTOR otherwise continues to violate in any substantial way any provisions of the Contract Documents seven (7) days after written notification from the OWNER, or the ENGINEER;

OWNER may, in the case where performance and payment bonds exist, notify the Surety on these bonds in writing to complete the Work, and a copy of said notice shall be delivered to the CONTRACTOR.

After receiving copy of said notice to Surety to complete the Work, the CONTRACTOR shall be excluded from the site and shall not remove from the site any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the Work, may be held for use on the Work by the OWNER or the Surety on the performance bond, or another contractor in completion of the Work; and the CONTRACTOR shall not receive any rental or credit therefor (except when used in connection with Extra Work, where credit shall be allowed as provided for under Paragraph 11), it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement. In any case, CONTRACTOR shall not be entitled to receive any further payments until the Work is finished.

Where there is no performance bond provided or in case the Surety should fail to commence compliance with the notice to complete the Work hereinabove provided for, within seven (7) days after service of such notice, then the OWNER may provide for completion of the work in either of the following elective manners:

- A. The OWNER may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as said OWNER may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said CONTRACTOR, and expense so charged shall be deducted and paid by the OWNER out of such moneys as may be due, or that may thereafter at any time become due to the CONTRACTOR under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the CONTRACTOR, then said CONTRACTOR shall receive the difference. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completed by said CONTRACTOR, then the CONTRACTOR and /or his Surety shall pay the amount of such excess to the OWNER; or
- B. The OWNER under sealed bids, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In case any increase in cost to the OWNER under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the CONTRACTOR and the Surety shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this contract, the CONTRACTOR and/or his Surety shall be credited therewith.

When the work has been completed the CONTRACTOR and his Surety shall be so notified and Certificates of Completion and Acceptance, as provided in Paragraph 14.13, shall be issued. A complete itemized statement of the contract account, certified to by the ENGINEER as being correct, shall then be prepared and delivered to the CONTRACTOR and his Surety, whereupon the CONTRACTOR and/or his Surety, or the OWNER as the case may be, shall pay the balance due as reflected by said statement, within thirty (30) days after the date of such Certificate of Completion.

In the event the statement of accounts shows that the cost to complete the Work is less than that which would have been the cost to the OWNER had the Work been completed by the CONTRACTOR under the terms of this contract; or when the CONTRACTOR and/or his Surety pays the balance in full shown to be due by them to the OWNER, then all machinery, equipment, tools, materials or supplies left on the site of the Work shall be turned over to the CONTRACTOR and/or his Surety. Should the cost to complete the Work exceed the contract price, and the CONTRACTOR and/or his Surety fail to pay the amount due the OWNER within

the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the Work, notice thereof, together with an itemized list of such equipment and materials shall be mailed to the CONTRACTOR and his Surety at the respective addresses designated in the contract, provided, however, that actual written notice is given in any manner will satisfy this condition. After mailing, or other giving of such notice, such property shall be held at the risk of the CONTRACTOR and his Surety subject only to the duty of the OWNER to exercise ordinary care to protect such property. After ten (10) days from the date of said notice the OWNER may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the CONTRACTOR and his Surety. Such sale may be made at either public or private sale, with or without notice, as the OWNER may elect. The OWNER shall release any machinery, equipment, tools, materials, or supplies, which remain on the site of the Work, and belong to persons other than the CONTRACTOR or his Surety, to their proper owners. The books on all operations provided herein shall be open to the CONTRACTOR and his Surety.

Cost by the OWNER to complete the Work as referenced herein, shall include, but not be limited to, all expenses for labor, machinery, equipment, tools, materials, and supplies along with any claims, losses, and damages sustained by OWNER arising out of or resulting from completing the Work.

Such expenses, claims, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER will not be required to obtain the lowest price for the Work performed.

SC-17.2.2 Add the following language to the end of Paragraph 17.2.2 of the General Conditions:

Contract time will be determined based on Calendar Days. A "Calendar Day" is defined as any day including Saturdays, Sundays, or legal holidays, in which weather or other conditions, not under the control of the CONTRACTOR, will permit construction of the principal units of the work for a period of not less than seven hours between 7:00 a.m. and 6:00 p.m.

END OF SUPPLEMENTARY CONDITIONS

**EXHIBIT SC-A TO
SUPPLEMENTARY CONDITIONS**

**A LISTING OF THE DUTIES, RESPONSIBILITIES AND
LIMITATIONS OF AUTHORITY OF THE PROJECT REPRESENTATIVE.**

ENGINEER shall furnish a Project Representative (PR) to assist ENGINEER in observing performance of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the PR, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of CONTRACTOR; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the PR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

PR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding PR's actions. PR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. PR's dealings with subcontractors shall be only through or with the full knowledge and approval of CONTRACTOR. PR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of PR

1. *Conferences and Meetings:* Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings.
2. *Liaison:*
 - a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
 - b. Assist in obtaining from OWNER additional details or information when directed by Engineer and when required for proper execution of the Work.
3. *Shop Drawings and Samples:* Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.

4. *Review of Work, Rejection of Defective Work, Inspections and Tests:*
 - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever PR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that PR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
5. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
6. *Modifications:* Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with PR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
7. *Records:* Maintain a diary or log book that reflects project data required to evaluate change order requests, time extension requests, and changed project conditions. The documentations shall include any significant on-site project meetings, and daily observations to ensure construction conformance with contract documents.
8. *Reports:*
 - a. Furnish ENGINEER periodic reports as required of progress of the Work.
 - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
 - c. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.
9. *Payment Requests:* Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

10. *Completion:*

- a. Before ENGINEER issues a Certificate of Final Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
- b. Conduct final inspection in the company of OWNER, and CONTRACTOR and prepare a final list of items to be completed or corrected.
- c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. Limitations of Authority

Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of the CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not authorize OWNER to occupy the Project in whole or in part.
7. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER

STANDARD SPECIFICATIONS

PART I GENERAL

- A. All work to be performed under this contract is to be performed in accordance with these Standard Specifications, unless these Standard Specifications are superseded by the attached Special Specifications.
1. Harris County, Texas.
 - a. Regulations of Harris County, Texas for the Approval and Acceptance of Infrastructure.
 2. Harris County Flood Control District.
 - a. 2005 Standard Specifications Book for Harris County Flood Control District
 3. Texas Commission on Environmental Quality (TCEQ)
 - a. Rules and Regulations for Water Systems and Sanitary Sewers

These forms in their current issue with all revisions and addenda, are made a part of the Contract Documents with the same force and effect as though bound herein. All construction performed under these Contract Documents shall be in accordance with the terms of these items used in conjunction with the other sections of the Contract Documents.

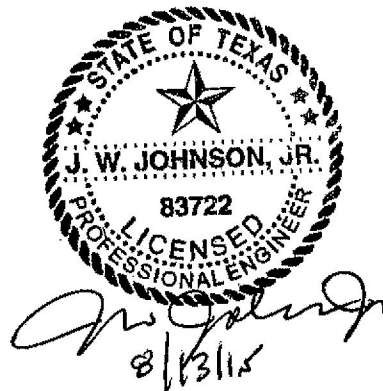
Copies of each of the above described items may be examined at the office of Brown & Gay Engineers, Inc., 10777 Westheimer, Suite 400, Houston, Texas 77042.

STAFF 2-2 Paid receipts, invoices, purchase orders, and agreements showing that the required capital improvement costs to provide wastewater service to the requested area have been paid for and installed and that equal the amounts listed in Interchange Item No. 1 on pages 529 and 532.

Nantucket Housing, LLC

Contract Documents and Specifications
for Construction of

**Meadows at Cypress Creek Wastewater
Treatment Plant Phase One (Site Work)**



August 2015



TBPE Registration No. F-1046

10777 Westheimer, Suite 400
Houston, Texas 77042
281-558-8700

Contract Documents and Specifications
for Construction of

**Meadows at Cypress Creek Wastewater
Treatment Plant Phase One (Site Work)**

CONTENTS

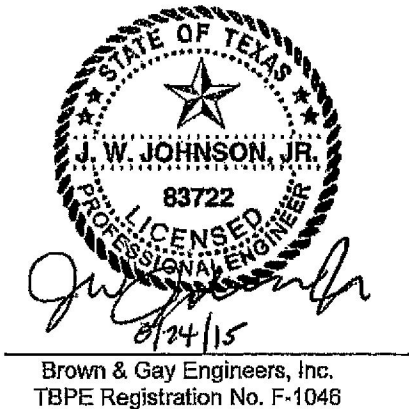
I.	INVITATION TO BIDDERS
II.	INSTRUCTIONS TO BIDDERS
III.	BID
IV.	STANDARD FORM OF AGREEMENT
V.	PERFORMANCE BOND
VI.	PAYMENT BOND
VII.	MAINTENANCE BOND
VIII.	CONTRACTOR'S WAIVERS AND LIEN RELEASES <ul style="list-style-type: none">• Conditional Waiver and Release on Progress Payment• Unconditional Waiver and Release on Progress Payment• Conditional Waiver and Release on Final Payment• Unconditional Waiver and Release on Final Payment
IX.	STANDARD GENERAL CONDITIONS
X.	SUPPLEMENTARY CONDITIONS
XI.	STANDARD SPECIFICATIONS
XII.	TECHNICAL SPECIFICATIONS

Nantucket Housing, LLC

ADDENDUM NO. ONE

Contract Documents and Specifications
for the Construction of

**Meadows at Cypress Creek Wastewater
Treatment Plant Phase One (Sitework)**



Brown & Gay Engineers, Inc.
TBPE Registration No. F-1046

Issue Date: August 24, 2015
Bid Date: **Monday, August 31, 2015 at 2:30 PM**

The following instructions are issued as revisions and/or clarifications to the Construction Documents and Drawings previously issued by Brown & Gay Engineers, Inc. for the above referenced project. These revisions and/or clarifications shall supersede and take precedence over previously issued construction drawings, bid documents, and specifications unless noted below.

BID DOCUMENTS AND TECHNICAL SPECIFICATIONS

1. Mark "VOID" or "DISCARD" **Section X – SUPPLEMENTARY CONDITIONS** of the contract documents and replace with the revised attached **Section X – SUPPLEMENTARY CONDITIONS**.

PLANS

2. Mark "VOID" or "DISCARD" **Plan Sheets 1 of 26, 4 of 26, 5 of 26, 6 of 26, 7 of 26, 8 of 26, and 9 of 26**, and replace with the revised attached **Plan Sheets 1 of 26, 4 of 26, 5 of 26, 6 of 26, 7 of 26, 8 of 26, and 9 of 26**.
3. Add Exhibit 1.

Clarification

4. If requested, Owner will provide contractor a statement of funds availability.
5. As stated in **Section II -- Instructions to Bidders, Paragraph 13, Submission of Bids**, submit bids in sealed envelope as instructed. Do not submit bid or Contractor's Statement of Qualifications electronically via email. Disregard the email submittal information contained in your email invitation notice dated August 13, 2015.

Acknowledge receipt of this Addendum in the appropriate space on the Bid Proposal Form.

END OF ADDENDUM NO. ONE

INVITATION TO BIDDERS

Sealed bids addressed to **Nantucket Housing, LLC**, will be received in the office of Brown & Gay Engineers, Inc., 10777 Westheimer, Suite 400, Houston, Texas, 77042 until **2:30 p.m., Monday, August 31, 2015**, at which time all bids will be opened privately for the furnishing of all material, equipment, labor and supervision necessary or incidental to the "**Construction of Meadows at Cypress Creek Wastewater Treatment Plant Phase One (Site Work).**"

Scope of Project:

On-Site work associated with the installation of a proposed 0.0275 MGD prefabricated WWTP (furnished and installed by others in separate construction contract). Work to include site work, underground piping and electrical construction including but not limited to fencing, excavation and subgrade preparation for the package treatment plant, onsite lift station and force main to the package plant bar screen, yard piping for non-potable water system, influent piping to the lift station, effluent piping from the package treatment plant together with all appurtenances, Complete In Place.

There will be a pre-bid meeting on **Friday, August 21, 2015 at 10:00 a.m.** at the office of the Engineer. Attendance is not mandatory.

Plans and bid documents are available for download at no charge at www.civcastusa.com search **2913-02 (SW)**.

There will be no bid security required for this project. The Owner reserves the right to reject any or all bids.

INSTRUCTIONS TO BIDDERS

1. Defined Terms.

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8)(1990 Edition) have the meanings assigned to them in the General Conditions.

Certain additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

1.1. Bidder - one who submits a Bid directly to Owner as distinct from a sub-bidder, who submits a bid to a Bidder.

1.2. Issuing Office - the office from which the Bidding Documents are prepared and where the bidding procedures are to be administered. For this project the issuing office is Brown & Gay Engineers, Inc., 10777 Westheimer, Suite 400, Houston, Texas 77042 (phone 281-558-8700).

1.3. Successful Bidder - the most qualified, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

1.4. Owner - the Owner is understood to be **Nantucket Housing, LLC**. Funding for the project will be provided in accordance with the terms and conditions described in the Special Conditions of Agreement.

2. Copies of Bidding Documents.

2.1. Complete sets of the Bidding Documents in the number and for the purchase price, if any, stated in the Invitation to Bidders may be obtained from www.civcastusa.com.

2.2. Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.3. Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

3. Qualifications of Bidders.

To demonstrate qualifications to perform the Work, each Bidder **must** submit with their bid a Qualification Statement form detailing written evidence such as financial data, proposed sub-contractors, present commitments, previous experience, equipment lists, evidence of authority to conduct business in the State of Texas and other such data as required to evaluate the Bidder's capability to perform the Work described in the Bidding Documents. Contractor must use attached form provided by the Engineer as **Exhibit "A."**

4. Examination of Contract Documents and Site.

4.1. It is the responsibility of each Bidder before submitting a Bid:

4.1.1. To examine thoroughly the Contract Documents and other related data identified in the Bidding Documents (including "technical data" referred to below);

4.1.2. To visit the site to become familiar with and satisfy Bidder as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work;

4.1.3. To consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work;

4.1.4. To study and carefully correlate Bidder's knowledge and observations with the Contract Documents and such other related data; and

4.1.5. To promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.

4.2. Reference is made to the Supplementary Conditions for identification of:

4.2.1. Those reports of explorations and tests of subsurface conditions at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may not rely upon the data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

4.2.2. Copies of such subsurface reports will be made available by Owner to any Bidder on request. Those reports are not part of the Contract Documents and are not a warranty of surface or subsurface conditions. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" contained therein. Bidder acknowledges that Owner and Engineer disclaim any responsibility for the accuracy, true location, and extent of the soils, surface, and subsurface investigations that have been prepared by others and disclaim responsibility for Bidder's interpretation of or conclusions or opinions drawn from such reports, e.g., without limitations, projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water. Bidder is expected to examine the site and such reports and then decide for itself the character of the materials to be encountered.

4.3. Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof or for Bidder's interpretation of or conclusions or opinions drawn from such information and data. The Contractor is advised to coordinate closely with Engineer and Operator prior to the commencement of any underground construction activities. Such information and data is not a part of the Contract Documents and is not a warranty of subsurface conditions.

4.4 Before submitting a Bid, each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

4.5 On request, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder must fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests and studies.

4.6 Reference is made to the Supplementary Conditions for the identification of the general nature of work that is to be performed at the site by the Owner or others (such as utilities and other prime contractors) that relates to the work for which a Bid is to be submitted. On request, Owner will provide, to each Bidder for examination, access to or copies of Contract Documents (other than portions thereof related to price) for such work.

4.7 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, method, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by Engineer is acceptable to Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

5. Availability of Lands for Work, etc.

The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

6. Interpretations and Addenda.

6.1. All questions about the meaning or intent of the Bidding Documents are to be directed to Engineer. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda. All parties recorded by the Engineer as having received the Bidding Documents will be called and the addendum will be mailed or transmitted by electronic facsimile. The eligible party has the option to pick up the addendum at the Engineer's Office and sign required documentation list. Questions received less than 72 hours prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6.2. Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer.

7. Bid Security (NOT REQUIRED)

8. Contract Times.

The number of days (working days) within which, or the dates by which, the Work is to be completed and ready for final payment are set forth in the Agreement (or incorporated therein by reference to the attached Bid Form).

9. Liquidated Damages.

Provisions for liquidated damages, if any, are set forth in the Agreement.

10. Substitutes and "Or-Equal" Items.

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a Substitutes or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Paragraphs 6.7.1, 6.7.2 and 6.7.3 of the General Conditions and may be supplemented in the Special Specifications.

11. Subcontractors, Suppliers and Others.

11.1. If the Supplementary Conditions require or if the Owner requests the identity of certain Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening submit to Owner a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person or organization if requested by Owner. An Owner or Engineer who after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, may before the Notice of Award is given request apparent Successful Bidder to submit an acceptable substitute without an increase in price.

If apparent Successful Bidder declines to make any such substitution, Owner may award the contract to the next most qualified, responsible, and responsive Bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.8.2 of the General Conditions.

11.2. No Contractor shall be required to employ any Subcontractor, Supplier, other person or organization against whom Contractor has reasonable objection.

12. Bid Form.

12.1. The Bid Form is included with the Bidding Documents; additional copies may be obtained from www.civcastusa.com.

12.2. All blanks on the Bid Form must be completed in ink or by typewriter.

12.3. Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

12.4. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

12.5. All names must be typed or printed in ink below the signature.

12.6. The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).

12.7. The address and telephone number for communications regarding the Bid must be shown.

12.8. Evidence of authority to conduct business as an out-of-state corporation in the state where the Work is to be performed shall be provided in accordance with Paragraph 3 above. State contractor license number, if any, must also be shown.

12.9. The bid price shall include such amount as the Bidder deems proper for overhead and profit.

13. Submission of Bids.

Bids shall be submitted at the time and place indicated in the Invitation to Bidders and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of Bidder and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it. Bids not received by the time or at the location specified will be returned unopened to the Bidder.

14. Modification and Withdrawal of Bids.

14.1. Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

14.2. If, within twenty-four hours after Bids are opened, any Bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid security will be retained by the Owner. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

15. Opening of Bids.

Bids will be opened privately. An abstract of the amounts of the base Bids and major alternates (if any) may be made available to Bidders after the opening of Bids.

16. Bids to Remain Subject to Acceptance.

All Bids will remain subject to acceptance for ninety days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid prior to that date.

17. Award of Contract.

17.1. Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, non-responsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful Bidder. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

17.2. In evaluating Bids, Owner will consider the qualifications of Bidders, compliance with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

17.3. Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. Owner may also consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

17.4. Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

17.5. If the contract is to be awarded, it will be awarded to the most qualified, responsible, and responsive Bidder whose evaluation by Owner indicates to Owner that the award will be most advantageous to Owner and result in the best and most economical completion of the Project.

17.6. If the contract is to be awarded, Owner will give Successful Bidder a Notice of Award within sixty days after the day of the Bid opening.

18. Contract Security.

Paragraph 5.1 of the General Conditions and the Supplementary Conditions set forth Owner's requirements as to performance and payment Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required performance and payment Bonds.

19. Signing of Agreement.

When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within ten days thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds. Within ten days thereafter Owner shall deliver one fully signed counterpart to Contractor.

20. Pre-bid Conference.

A pre-bid conference will be held at the time and place indicated in the Invitation to Bidders. Representatives of Owner and Engineer will be present to discuss the project. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

21. Retainage.

An amount equal to ten percent of the amount of each monthly estimate (in accordance with current state laws) will be retained by the Owner until final payment under the Contract is approved.

22. Permits.

The successful bidder shall be responsible for obtaining all required permits, including, but not limited, to the following:

Regulations of Harris County, Texas for Flood Plain Management regarding placement of fill.

Permit for construction within existing Harris County street right-of-way, as applicable.

23. Locations for Examining Contract Documents.

Bidders may examine the contract documents for these contracts at www.civcastusa.com.

24. Workers' Compensation Insurance Coverage.

(A) Definitions

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission (the "TWCC"), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Section 406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(B) The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreement, which meets the statutory requirements of Texas Labor Code, §401.011 (44) for all employees of the Contractor providing services on the project, for the duration of the project.

- (C) The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.
- (D) If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner, showing that the coverage has been extended.
- (E) The Contractor shall obtain from each person providing services on the project, and provide to the Owner:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so that the Owner will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (F) The Contractor shall retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (G) The Contractor shall notify the Owner in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (H) The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the TWCC, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage.
- (I) The Contractor shall contractually require each person with whom it contracts to provide service on a project to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code §401.011 (44) for all its employees providing services on the project, for the duration of the project;
 - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of the coverage period, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

- (6) notify the Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing service on the project; and
 - (7) contractually require each other person with whom it contracts to perform as required by paragraphs (1) - (7), with the certificate of coverage to be provided to the person for whom they are providing services.
- (J) By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the TWCC's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (K) The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

**Nantucket Housing, LLC
Meadows at Cypress Creek Wastewater
Treatment Plant Phase One (Site Work)**

Bid Form

C:\Users\medwards\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\H9T9EBOW\20151022_BIDFORM.xlsx]Sheet1

ITEM	QUANTITY & UNIT	UNIT COST	ITEM TOTAL
UNIT A: BASE BID ITEMS			
1. On-Site work associated with the installation of a proposed 0.0275 MGD prefabricated WWTP (furnished and installed by others in separate construction contract). Work to include site work, underground piping and electrical construction including but not limited to fencing, excavation and subgrade preparation for the package treatment plant, onsite lift station and forcemain to the package plant bar screen, yard piping for non-potable water system, influent piping to the lift station, effluent piping from the package treatment plant together with all appurtenances, Complete In Place.	1 LS	\$ _____	\$ _____
2. Electrical System Installation, Provide and install and service Structure, electrical service equipment, switchboard, lift station control panel with solid-state controller, lift pump motor feeders and terminal boxes, feeders for vendor furnished control panels, autodialer, lighting , receptacles, conduit, conductors, and all required appurtenances as shown on plans and as described in specifications for a complete operating system, Complete In Place.	1 LS	\$ _____	\$ _____
3. Trench Safety System, Complete In Place.	1 LS	\$ _____	\$ _____
TOTAL, UNIT A			\$ 559,250.00

UNIT B: SUPPLEMENTAL ITEMS

1. "Extra" as directed, Excavation and Backfill for Structures, Complete In Place. (\$5.00 per CY minimum)	50 CY	\$	\$
2. "Extra" as directed, Excavation, Trenching, and Backfill for Utilities, Complete In Place. (\$5.00 per CY minimum)	50 CY	\$	\$
3. "Extra" as directed, Crushed Concrete Paving, 8" Thick, Complete In Place. (\$10.00 per SY minimum)	100 SY	\$	\$
4. "Extra" as directed, Lime Stabilized Sub-Grade, 12" Thick, Complete In Place. (\$6.00 per SY minimum)	100 SY	\$	\$
5. "Extra" as directed, Cement Stabilized Sand, Complete In Place. (\$18.00 per CY minimum)	50 CY	\$	\$
6. "Extra" as directed, Ductile Iron Fittings, Complete In Place. (\$1,500.00 per TON minimum)	5 TON	\$	\$
7. "Extra" as directed, 8-ft Tall Chain Link Fence, Complete In Place. (\$10.00 per LF minimum)	250 LF	\$	\$
8. "Extra" as directed, Hydromulch Seeding, Complete In Place (\$3.00 per SY minimum)	100 SY	\$	\$
9. "Extra" as directed, Reinforcing Steel, Complete In Place. (\$1,000.00 per TON minimum)	2 TON	\$	\$
10. "Extra" as directed, Cast-in-Place Concrete, Complete In Place. (\$200.00 per CY minimum)	25 CY	\$	\$
11. "Extra" as directed, 2-Inch Water Line, Complete In Place. (\$15.00 per LF minimum)	100 LF	\$	\$
12. "Extra" as directed, 6-Inch Ductile Iron Pipe, Aboveground and All Depths, Complete In Place. (\$50.00 per LF minimum)	200 LF	\$	\$

13. "Extra" as directed, 8-Inch Ductile Iron Pipe, Aboveground and All Depths, Complete In Place. (\$50.00 per LF minimum)	200 LF	\$ _____	\$ _____
14. "Extra" as directed, 6-Inch C905 DR 18, Aboveground and All Depths, Complete In Place. (\$22.00 per LF minimum)	200 LF	\$ _____	\$ _____
15. "Extra" as directed, 8-Inch C905 DR 18, Aboveground and All Depths, Complete In Place. (\$22.00 per LF minimum)	200 LF	\$ _____	\$ _____
16. "Extra" as directed, 6-Inch C900 DR 18, Aboveground and All Depths, Complete In Place. (\$15.00 per LF minimum)	200 LF	\$ _____	\$ _____
17. "Extra" as directed, 8-Inch C900 DR 18, Aboveground and All Depths, Complete In Place. (\$15.00 per LF minimum)	200 LF	\$ _____	\$ _____
18. "Extra" as directed, Allowance for Miscellaneous Site Improvements	1 LS	\$ _____	\$ _____
TOTAL, UNIT B			\$ _____

UNIT C: ALLOWANCES

1. Allowance for Electric Service Provider	1 LS	To Be Coordinated by Owner	
2. Allowance for Telephone Service Provider	1 LS	To Be Coordinated by Owner	
3. Allowance for Lift Station Controller Programming and Commissioning Include an "allowance" for lift station controller programming and commissioning per Section 16904-"Controller"	1 LS	\$ 12,500.00	\$ 12,500.00
TOTAL, UNIT C			\$ 12,500.00

SUMMARY

UNIT A: BASE BID ITEMS	\$ 559,250.00
UNIT B: SUPPLEMENTAL ITEMS	\$
UNIT C: ALLOWANCES	\$ 12,500.00
TOTAL BID	\$ 571,750.00

The work described above will be awarded under one contract. The undersigned agrees that the prices listed include sufficient compensation for the completion of the work bid upon including all necessary site work, hauling, and other work incidental to the completion of the project.

No changes shall be made in the phraseology of the Bid Form or of the items mentioned therein. The Bidder agrees that a bid may be disqualified if the bid contains an omission, erasure, alteration, or addition to the Bid Form.

In the event an extension error is made in computing the bid, the "unit cost" column will control. Qualifying statements or accompanying qualifying letter will be cause for rejection of bid.

BIDDER agrees that the Work will be completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within **120 calendar days** after the date when the Contract Times commences to run.

BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.

Terms used in this Bid which are defined in the General Conditions or Instructions to Bidders will have the meanings indicated in the General Conditions or Instructions to Bidders.

SUBMITTED on _____, 20____.

State Contractor License No. _____

INDIVIDUAL:

(individual) _____ (Seal)
doing business as _____
Business Address _____
Business Phone _____

PARTNERSHIP:

By (firm) _____ (Seal)
(General Partner) _____
Business Address _____
Business Phone _____

CORPORATION:

By (corp.) _____ (Seal)
State of Incorporation _____
By (person authorized) _____
Title _____

Attest (Secretary) _____
Business Address _____
Business Phone _____
Date of Qualification to do business is _____

JOINT VENTURE:

By (name) _____ (Seal)
Address: _____
By (name) _____ (Seal)
Address: _____
Address & Phone No. for official communications:

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT is dated as of _____, 20__ by and between **Nantucket Housing, LLC** (hereinafter called OWNER) and **Nunn Constructors, Ltd.** (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**Construction of Meadows at Cypress Creek
Wastewater Treatment Plant Phase One (Site Work)
Contract Amount: \$571,750.00**

Article 2. ENGINEER.

The project has been designed by Brown & Gay Engineers, Inc., 10777 Westheimer, Suite 400, Houston, Texas 77042 (phone 281-558-8700) who is hereinafter called ENGINEER and who is to act as OWNER'S representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES.

The Work will be completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within **120 calendar days** after the date when the Contract Times commence to run.

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in the above paragraph, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in ascertaining and proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER **Five Hundred Dollars (\$500.00)** for each day that expires after the time specified in the above paragraph for completion and readiness for final payment. OWNER and CONTRACTOR agree that such amount is a reasonable forecast of the damages OWNER will sustain per day that the work remains uncompleted. OWNER shall have the option of deducting the amount of any liquidated damages from any monies that may be owed to CONTRACTOR or to recover such amount from the CONTRACTOR or its Sureties, at CONTRACTOR'S expense.

Article 4. CONTRACT PRICE.

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to the Bid Proposal and any subsequent change orders thereto.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions and Supplemental Conditions.

OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER and in conformance with the procedures described in the General Conditions. All such payments will be measured by the schedule of values established in paragraph 2.9 of the General Conditions (and on the number of units of each bid item completed). Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 7) and the other related data identified in the Bidding Documents including "technical data".

CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance or furnishing of the Work.

CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents, are not a warranty of surface or subsurface conditions, and may not be complete for CONTRACTOR'S purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of the information and data relating to surface or subsurface conditions or with respect to Underground Facilities at or contiguous to the site or CONTRACTOR'S interpretation of such information and data. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise

which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

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

CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS.

1. This Agreement and Special Conditions of Agreement
2. Exhibits to this Agreement
3. Performance, Payment, and other Bonds identified
4. Invitation to Bidders
5. Instructions to Bidders
6. Notice to Proceed
7. General Conditions
8. Supplementary Conditions
9. Standard and Special Specifications
10. Construction Drawings
11. Addenda
12. CONTRACTOR'S Bid
13. Documentation submitted by CONTRACTOR prior to Notice of Award
14. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached thereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

There are no Contract Documents other than those listed in this Article. The Contract Documents may only be amended, modified, or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

Article 8. INDEMNITY PROVISIONS.

THE GENERAL, SPECIAL, AND SUPPLEMENTARY CONDITIONS ATTACHED TO THIS AGREEMENT CONTAIN PROVISIONS THAT MAY RELIEVE ONE PARTY FOR RESPONSIBILITY IT WOULD OTHERWISE HAVE UNDER THE LAW FOR DAMAGES OR OTHER LIABILITY ARISING OUT OF THE WORK.

EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT, THE GENERAL, SPECIAL, AND SUPPLEMENTARY CONDITIONS, AND ALL OTHER ATTACHMENTS TO THIS AGREEMENT AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND ALL ATTACHMENTS HERETO; THAT IT HAS IN FACT READ THIS AGREEMENT AND ALL ATTACHMENTS HERETO AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE PRECEDING ITS EXECUTION OF THIS AGREEMENT AND HAS RECEIVED OR VOLUNTARILY CHOSEN NOT TO RECEIVE THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT; AND THAT IT RECOGNIZES THAT CERTAIN TERMS OF THIS AGREEMENT AND ALL ATTACHMENTS HERETO RESULT IN ONE PARTY ASSUMING THE LIABILITY INHERENT IN SOME ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEMENT OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT, THE GENERAL, SPECIAL, AND SUPPLEMENTARY CONDITIONS, OR ANY OTHER ATTACHMENTS TO THIS AGREEMENT ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS".

Article 9. MISCELLANEOUS.

Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

No assignment by a party hereto of any rights or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

OWNER and CONTRACTOR each binds itself, its officers, directors, shareholders, partners, successors, assigns, and legal representatives to the other party hereto, its officers, directors, shareholders, partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

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

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR, and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on _____, 20____ (which is the effective date of the Agreement).

OWNER: Nantucket Housing, LLC

By: _____

Attest: _____

Address for giving notices:

9219 Katy Freeway, Suite 200

Houston, TX 77024

CONTRACTOR: Nunn Constructors, Ltd.

By: _____

(CORPORATE SEAL)

Attest: _____

Address for giving notices:

23602 Botkins, Hockley, TX 77447

License No. _____

Agent for service of process: _____

Bond No. _____

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT Nunn Constructors, Ltd. as Principal, and hereinafter called "**Principal**," and _____, a corporation organized and existing under the laws of the State of Texas, as Surety, hereinafter called "**Surety**," are held and firmly bound unto Nantucket Housing, LLC of Houston, Texas, as Obligee, and hereinafter called "**Owner**," in the sum of **Five Hundred Seventy One Thousand Seven Hundred Fifty Dollars and no cents (\$571,750.00)**, lawful money of the United States of America, for the payment of which Principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into and agreed to perform a construction contract dated _____, with Owner for the construction of:

Meadows at Cypress Creek Wastewater Treatment Plant Phase One (Site Work)

on land of Owner located in Harris County, Texas, in accordance with such contract and the contract documents referred to therein, which contract is made a part hereof and incorporated herein by this reference and is hereinafter called the "Contract."

NOW, THEREFORE, the condition of this obligation is such that, if Principal shall well and truly perform all the undertakings, covenants, terms, conditions and agreements of the contract on its part, including all guarantees and warranties provided therein, and fully indemnify and save harmless said Obligee from all cost and damage which they may suffer by reason of Principal's failure to do so, and fully reimburse and repay said Obligee all outlay and expense which it may incur in making good such default, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

There shall be no liability of the part of the Principal or Surety under this bond to the Obligee unless the Obligee shall make payments to the Principal, or to the Surety in case it arranges for completion of the Contract upon default of the Principal, strictly in accordance with the terms of said Contract as to payments, and shall perform all other obligations required to be performed under said Contract at the time and in the manner therein set forth.

SURETY does hereby consent to any and all alterations, modifications and revisions to the Contract secured by this bond, including, but not limited to, any extensions of time for performance which may be agreed upon by and between the Owner and the Principal. Surety does hereby waive notice of any such alterations, modifications and revisions.

Dated _____, 20_____.

Nunn Constructors, Ltd.

[Name of Surety]

Name: _____

Name: _____

Title: _____

Title: _____

PRINCIPAL

SURETY

Bond No. _____

**PAYMENT BOND UNDER SECTIONS 53.201,
ET SEQ., TEXAS PROPERTY CODE**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT Nunn Constructors, Ltd., as Principal, and hereinafter called "Principal," and _____, a corporation organized and existing under the laws of the State of Texas, as Surety, hereinafter called "Surety," are held and firmly bound unto **Nantucket Housing, LLC**, of Houston, Texas, as Obligee, and hereinafter called "Owner," in the sum of **Five Hundred Seventy One Thousand Seven Hundred Fifty Dollars and no cents (\$571,750.00)**, lawful money of the United States of America, for the payment of which Principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into and agreed to perform a construction contract dated _____, with Owner for the construction of:

Meadows at Cypress Creek Wastewater Treatment Plant Phase One (Site Work)

on land of Owner located in Harris County, Texas, in accordance with such contract and the contract documents referred to therein, which contract is made a part hereof and incorporated herein by this reference and is hereinafter called the "Contract."

NOW, THEREFORE, the condition of this obligation is such that, if Principal shall promptly pay for all claims for labor, subcontracts, materials, specially fabricated materials (all as defined in Section 53.001, Texas Property Code), and normal and usual extras not exceeding fifteen percent (15%) of the contract price provided in the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect.

This bond is executed and made at the request of Owner and pursuant to Section 53.201 et seq. of said Texas Property Code, and it shall inure solely to the benefit of all claimants giving and filing the applicable notices and claims or making claims as provided in said Section 53.201 et seq.

Dated _____, 20_____.

Nunn Constructors, Ltd.

By: _____
Name: _____
Title: _____

PRINCIPAL

[Name of Surety]

By: _____
Name: _____
Title: Attorney-in-Fact

SURETY

The name, mailing address, physical address and telephone number, including the area code, of the Surety to which any notice of claim should be sent:

APPROVAL OF OWNER

Nantucket Housing, LLC, as the Owner named and referred to in the foregoing bond and the construction contract incorporated in the foregoing bond, hereby endorses and approves the foregoing bond and approves the filing of same in the office of the County Clerk of Harris County, Texas, this ____ day of _____, 20_____.

Nantucket Housing, LLC

By: _____
Name: _____
Title: _____
OWNER

Bond No. _____

MAINTENANCE BOND

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

KNOW ALL PERSONS BY THESE PRESENTS:

That Nunn Constructors, Ltd., (Contractor), of the City of Hockley, County of Harris, and State of Texas, as **Principal**, and _____, authorized under the Laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto Nantucket Housing, LLC, of Houston, Texas, (**Owner**), in the penal sum of **Five Hundred Seventy One Thousand Seven Hundred Fifty Dollars and no cents (\$571,750.00)** for the payment whereof, the said Principal and Surety bind themselves, and their respective officers, directors, shareholders, partners, heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the _____ day of _____, 20____, for construction of:

Meadows at Cypress Creek Wastewater Treatment Plant Phase One (Site Work)

which contract is hereby referred to and make a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if the said Principal shall repair any and all defects in said work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Principal in performing the work covered by the Contract, occurring within a period of **one-year** beginning on the date of the **one-year** correction period provided under this Contract, in accordance with the provisions of the Contract, then, this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, That this bond is executed pursuant to the provisions of Section 53.202 of the Texas Property Code as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Statute to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to work performed thereunder, or the plans, specifications, or drawings, accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or the work to be performed thereunder.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on this date, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(seal)

Nunn Constructors, Ltd.

(CONTRACTOR)

WITNESS: _____

BY: _____

(SURETY)

WITNESS: _____

BY: _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as Principal in the within bond; that _____, who signed the said bond on behalf of the Principal, was then _____ of said corporation, that I know his signature and his signature thereto is genuine and that said bond was duly designed, and attested for in behalf of said corporation by authority of its governing body.

(Corporate Seal)

Subscribed and sworn to before me, the undersigned authority, on this _____ day of _____, 20____.

Notary Public in and for _____ County

ATTACH POWER OF ATTORNEY

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

PROJECT **Construction of Meadows at Cypress Creek Wastewater Treatment Plant
Phase One (Site Work)**

JOB NO. 2913-02

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of **Nantucket Housing, LLC** (owner) located at 12321 Huffmeister Road, Cypress, Texas 77429 (location) to the following extent: SEE ABOVE (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date: _____

Nunn Constructors, Ltd.

By: _____ (Signature)

_____ (Title)

STATE OF _____

COUNTY OF _____

SUBSCRIBED AND SWORN TO before me by the said _____, who further acknowledged to me that he/she is the person executing this **CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT** and that he/she is fully authorized to do so on behalf of _____, a _____ on this ____ day of _____, 20__, to certify which witness my hand and seal of office.

Notary Public – State of _____

My Commission Expires: _____

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date: _____

Nunn Constructors, Ltd.

By: _____ (Signature)

_____(Title)

STATE OF _____

COUNTY OF _____

SUBSCRIBED AND SWORN TO before me by the said _____, who further acknowledged to me that he/she is the person executing this UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT and that he/she is fully authorized to do so on behalf of _____, a _____ on this ____ day of _____, 20__, to certify which witness my hand and seal of office.

Notary Public – State of _____

My Commission Expires: _____

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

PROJECT **Construction of Meadows at Cypress Creek Wastewater Treatment Plant
Phase One (Site Work)**
JOB NO. 2913-02

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of **Nantucket Housing, LLC** (owner) located at 12321 Huffmeister Road, Cypress, Texas 77429 (location) to the following extent: SEE ABOVE (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date: _____

Nunn Constructors, Ltd.

By: _____ (Signature)

_____ (Title)

STATE OF _____

COUNTY OF _____

SUBSCRIBED AND SWORN TO before me by the said _____, who further acknowledged to me that he/she is the person executing this **CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT** and that he/she is fully authorized to do so on behalf of _____, a _____ on this _____ day of _____, 20____, to certify which witness my hand and seal of office.

Notary Public – State of _____

My Commission Expires: _____

NOTICE:

THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

PROJECT **Construction of Meadows at Cypress Creek Wastewater Treatment Plant
Phase One (Site Work)**
JOB NO. 2913-02

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of **Nantucket Housing, LLC** (owner) located at 12321 Huffmeister Road, Cypress, Texas 77429 (location) to the following extent: SEE ABOVE (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors,

materialmen and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date: _____

Nunn Constructors, Ltd.

By: _____ (Signature)

_____ (Title)

STATE OF _____

COUNTY OF _____

SUBSCRIBED AND SWORN TO before me by the said _____, who further acknowledged to me that he/she is the person executing this UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT and that he/she is fully authorized to do so on behalf of _____, a _____ on this ____ day of _____, 20__, to certify which witness my hand and seal of office.

Notary Public – State of _____

My Commission Expires: _____

STANDARD GENERAL CONDITIONS

The Standard General Conditions of the Construction Contract (EJCDC No. 1910-8, 1990 Edition) of the Engineers Joint Contract Documents Committee with all current revisions are made a part of these Contract Documents with the same force and effect as though bound herein.

Copies may be examined at the office of Brown & Gay Engineers, Inc., 10777 Westheimer, Suite 400, Houston, Texas 77042.

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8) (1990 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect. To the extent of a conflict between the standard General Conditions and these Supplementary Conditions, these Supplementary Conditions Control.

SC-1 The terms used in the Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1990 Edition) have the meanings assigned to them in the General Conditions.

SC-2.1 Delete Paragraph 2.1 of the General Conditions in its entirety and insert the following in its place:

When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds and insurance as CONTRACTOR may be required to furnish in accordance with Article 5, as amended by these Supplementary Conditions.

SC-2.7 Delete Paragraph 2.7 of the General Conditions in its entirety.

SC-4.2 MTEC Companies, Inc. has prepared a report (Project No. MT-2011-004-018 dated April 30, 2015) entitled "**Report of Geotechnical Evaluation, Water and Waste Water Treatment Plants, Huffmeister Senior Facilities**" that addresses the subsurface conditions at or adjacent to the project site. This report may be examined in the office of the Engineer.

Contractor may not rely upon the data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

Copies of such subsurface reports will be made available by Owner to Contractor on request. Those reports are not part of the Contract Documents and are not a warranty of surface or subsurface conditions. Contractor is responsible for any interpretation or conclusion drawn from any "technical data" contained therein. Contractor acknowledges that Owner and Engineer disclaim any responsibility for the accuracy, true location, and extent of the soil, surface, and subsurface investigations that have been prepared by others and disclaim responsibility for Contractor's interpretation of or conclusions or opinions drawn from such reports, e.g., without limitation, projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water. Contractor is expected to examine the site and such reports and then decide for itself the character of the materials to be encountered.

Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof or for Contractor's interpretation of or conclusions or opinions drawn from such information and data. The Contractor is advised to coordinate closely with Engineer and Operator prior to the commencement of any underground construction activities. Such information and data is not a part of the Contract Documents and is not a warranty of subsurface conditions.

SC-4.4 Delete Paragraph 4.4 of the General Conditions in its entirety and insert the following in its place:

OWNER will supply construction staking to establish both reference points and layout for the project. CONTRACTOR shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. CONTRACTOR shall give a minimum of two working days' notice to the survey company employed by the OWNER when requesting staking services and a minimum of 4 working hours' notice to the survey company employed by the OWNER for cancellation of scheduled staking services. The CONTRACTOR will pay for any re-staking charges due to CONTRACTOR'S lack of protection for established survey points, and for any charges resulting from CONTRACTOR'S improper cancellation of scheduled staking services. The OWNER shall have the option to deduct and withhold the amount of any re-staking charges and charges for improper cancellation of scheduled staking services from any monies due to the CONTRACTOR or recover such amount from the CONTRACTOR or the CONTRACTOR'S surety at the CONTRACTOR'S expense.

SC-4.5.4 Delete Paragraph 4.5.4 of the General Conditions in their entirety.

SC-4.5.5 Delete Paragraph 4.5.5 of the General Conditions in their entirety.

SC-5.1 Delete Paragraph 5.1 of the General Conditions in its entirety and insert the following in its place:

The successful bidder must submit, within 7 days after the date of the Owner's Notice of Award, Payment and Performance Bonds, as well as a Maintenance Bond (if so required by these Supplementary Conditions) on the forms furnished, in the amount of 100% of the total contract price. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by laws or regulations or the Contract Documents. The surety company issuing Payment and Performance Bonds, and a Maintenance Bond (if so required by these Supplementary Conditions), must (a) be authorized to do business in the State of Texas as evidenced by licensing through the State Board of Insurance; (b) be authorized to issue Payment and Performance Bonds, and Maintenance Bonds (if so required by these Supplementary Conditions), in the amount required for the contract as indicated by the records of the State Board of Insurance; (c) for contracts over \$100,000, the surety must also hold a certificate of authority from the United States Secretary of Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law ("Certificate of Authority") or have obtained reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a Certificate of Authority; and (d) have a rating of at least "B+" in the current Best's Key Rating Guide or, if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570.

If the surety company does not have a rating in Best's Key Rating Guide and is eligible to participate in the surety bond program of the Small Business Administration, the Payment and Performance Bonds, and the Maintenance Bond (if so required by these Supplementary Conditions) issued by such surety, in addition to the criteria set out above, also must meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury with respect to Performance and Payment Bonds, and Maintenance Bonds (if so required by these Supplementary Conditions), for federal jobs, including specifically the rules related to the underwritten limitation.

The person executing the Payment and Performance Bonds, and the Maintenance Bond (if so required by these Supplementary Conditions), must be licensed as a Texas Local Recording Agent through the State Board of Insurance as required by the laws of the State of Texas and such licensing must be recorded in the files of the State Board of Insurance.

The person executing the Payment and Performance Bonds, and the Maintenance Bond (if so required by these Supplementary Conditions), must hold an appointment from the surety company to execute Payment and Performance Bonds, and the Maintenance Bond (if so required by these Supplementary Conditions), and bind such surety, and such appointment must be recorded in the office of the State Board of Insurance.

SC-5.3.1 Delete Paragraph 5.3.1 of the General Conditions in its entirety and insert the following in its place:

All Bonds and insurance required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

SC-5.3.2 Delete Paragraph 5.3.2 of the General Conditions in its entirety and insert the following in its place:

CONTRACTOR shall deliver to OWNER, within 7 days after the date of Owner's Notice of Award, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any additional insured) which CONTRACTOR is required to purchase and maintain in accordance with Article 5.

SC-5.4 The limits of liability for the insurance required by Paragraph 5.4 of the General Conditions shall provide the following coverages for not less than the following amounts or greater where required by Laws and Regulations:

5.4.1 and 5.4.2 Workers' Compensation etc. under Paragraphs 5.4.1 and 5.4.2 of the General Conditions:

(1) State:	Statutory
(2) Applicable Federal:	Statutory
(3) Employers Liability:	Accident \$500,000 each accident; Disease \$500,000 each employee; Disease \$500,000 policy limit

CONTRACTOR shall provide Waiver of Subrogation on Worker's Compensation to OWNER and ENGINEER.

5.4.3, 5.4.4, and 5.4.5 Commercial General Liability Insurance under Paragraphs 5.4.3 through 5.4.5 of the General Conditions, which shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of CONTRACTOR (CONTRACTOR's policies to be primary in all cases):

- | | |
|---|-------------|
| (1) General Aggregate:
(Except Products-Completed Operations) | \$2,000,000 |
| (2) Products-Completed Operations Aggregate: | \$1,000,000 |
| (3) Personal and Advertising Injury with
Contractual and Employment Exclusions
Deleted: (Per person/Organization) | \$1,000,000 |

- | | |
|---|-------------|
| (4) Each Occurrence: (Bodily Injury and Property Damage) | \$1,000,000 |
| | |
| (5) Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where applicable (per occurrence). | \$1,000,000 |
| | |
| (6) Umbrella Liability (per occurrence): | |
| General Aggregate | \$2,000,000 |
| Each Occurrence | \$1,000,000 |
| | |
| (7) Broad Form Property Damage Liability, Including Completed Operations (per occurrence): | \$1,000,000 |
| | |
| (8) Independent Contractors Coverage (per occurrence) | \$1,000,000 |

5.4.6 Automobile Liability:

Combined Single Limit (Bodily Injury and Property Damage):
\$1,000,000 Each Accident

SC-5.4.1 Add the following language to the end of Paragraph 5.4.1 of the General Conditions:

Workers' Compensation Insurance Coverage

(A) Definitions

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission (the "TWCC"), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the CONTRACTOR's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Section 406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the CONTRACTOR has undertaken to perform on the project, regardless of whether that person contracted directly with the CONTRACTOR and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- (B) The CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amount and filing of any coverage agreement, which meets the

statutory requirements of Texas Labor Code, §401.011 (44) for all employees of the CONTRACTOR providing services on the project, for the duration of the project.

- (C) The CONTRACTOR must provide a certificate of coverage to the OWNER prior to being awarded the contract.
- (D) If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with the OWNER, showing that the coverage has been extended.
- (E) The CONTRACTOR shall obtain from each person providing services on the project, and provide to the OWNER:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so that the OWNER will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (F) The CONTRACTOR shall retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (G) The CONTRACTOR shall notify the OWNER in writing by certified mail or personal delivery, within 10 days after the CONTRACTOR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (H) The CONTRACTOR shall post on each project site a notice, in the text, form and manner prescribed by the TWCC, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage.
- (I) The CONTRACTOR shall contractually require each person with whom it contracts to provide service on a project to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code §401.011 (44) for all its employees providing services on the project, for the duration of the project;
 - (2) provide to the CONTRACTOR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project.
 - (3) provide the CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the CONTRACTOR:

- (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of the coverage period, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the OWNER in writing by certified mail or personal delivery, within 10 days after the person knew or should known, of any change that materially affects the provision of coverage of any person providing service on the project; and
 - (7) contractually require each other person with whom it contracts to perform as required by paragraphs (1) - (7), with the certificate of coverage to be provided to the person for whom they are providing services.
- (J) By signing this contract or providing or causing to be provided a certificate of coverage, the CONTRACTOR is representing to the OWNER that all employees of the CONTRACTOR who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the TWCC's Division of Self-Insurance Regulation. Providing false or misleading information may subject the CONTRACTOR to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (K) The CONTRACTOR's failure to comply with any of these provisions is a breach of contract by the CONTRACTOR which entitles the OWNER to declare the contract void if the CONTRACTOR does not remedy the breach within ten days after receipt of notice of breach from the OWNER.

SC-5.4.7 Add the following entities as additional insureds on the policy and any endorsements:

Nantucket Housing, LLC
Brown & Gay Engineers, Inc.

SC-5.4.8 Additional insurance required by the OWNER includes:

Endorsement CG 20-10-10-93, Form B to the benefit of OWNER, aggregate limits of insurance per project or its practical equivalent.

Amend the last Paragraph of this endorsement to read as follows:

WHO IS INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your operations performed for that insured.

Endorsement CG 20-07-10-93 to the benefit of ENGINEER, aggregate limits of insurance per project or its practical equivalent.

Amend Paragraph A of this endorsement to read as follows:

WHO IS INSURED (Section II) is amended to include as an insured any engineer or surveyor with respect to liability arising out of your premises or operations performed.

SC-5.4.9 Delete entire Paragraph 5.4.9 of the General Conditions in its entirety and insert the following in its place:

include products/completed operations insurance;

SC-5.4.10 The Contractual Liability coverage required by Paragraph 5.4.10 of the General Conditions shall provide coverage for not less than the following amounts:

- | | |
|---|-------------|
| (1) General Aggregate | \$1,000,000 |
| (2) Each Occurrence (Bodily Injury and Property Damage) | \$1,000,000 |

SC-5.4.11 Delete paragraph 5.4.11 of the General Conditions in its entirety and insert the following in its place:

contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given by insurance company via certified mail to OWNER, ENGINEER, and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to Paragraph 5.3.2 will so provide);

SC-5.4.14 Add a new Paragraph immediately after Paragraph 5.4.13 of the General Conditions which is to read as follows:

Claims Against Aggregate. OWNER must be notified immediately by insurance company via certified mail upon knowledge of possible damage claims that might cause a reduction below seventy-five percent (75%) of any aggregate limit of any policy.

SC-5.6 Amend the first sentence of Paragraph 5.6 of the General Conditions to read as follows:

CONTRACTOR shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

and as so amended the other Paragraphs under Paragraph 5.6 remain in effect.

Add the following language at the end of Paragraph 5.6 of the General Conditions:

The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this Paragraph 5.6 shall comply with the requirements of Paragraph 5.8 of the General Conditions.

SC-5.6.1 Delete Paragraph 5.6.1 of the General Conditions in its entirety and insert the following in its place:

include the interests of OWNER, ENGINEER, ENGINEER'S Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

SC-5.7 Delete Paragraph 5.7 of the General Conditions in its entirety and insert the following in its place:

CONTRACTOR shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

SC-5.8 Delete Paragraph 5.8 of the General Conditions in its entirety and insert the following in its place:

All policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by CONTRACTOR in accordance with Paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days' prior written notice by certified mail from insurance company has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.11.

SC-5.9 Delete Paragraph 5.9 of the General Conditions in its entirety and insert the following in its place:

OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interests of the CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts. The risk of loss within such deductible amount, will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

SC-5.10 Delete Paragraph 5.10 of the General Conditions in its entirety.

SC-5.11 Amend the heading for Paragraph 5.11 of the General Conditions to read as follows:

Waiver and Release of Rights:

SC-5.11.1 Delete Paragraph 5.11.1 of the General Conditions in its entirety and insert the following in its place:

All policies purchased in accordance with Paragraphs 5.6 and 5.7 will protect OWNER, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insured or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. CONTRACTOR waives all rights against OWNER, ENGINEER, ENGINEER's Consultants, and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance; and, in addition, waives all such rights against ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused.

SC-5.11.2 Amend the first sentence of Paragraph 5.11.2 of the General Conditions to read as follows:

In addition, CONTRACTOR waives all rights against OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them for:

and as so amended the other Paragraphs under Paragraph 5.11.2 remain in effect.

Amend the last sentence of Paragraph 5.11.2 of the General Conditions to read as follows:

Any insurance policy maintained by CONTRACTOR covering any loss, damage or consequential loss referred to in this paragraph 5.11.2 shall contain provisions to the effect that in the event of payment of any such loss, damage or consequential loss the insurers will have no rights of recovery against any of OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them.

SC-5.11.2.1 Delete Paragraph 5.11.2.1 of the General Conditions in its entirety and insert the following in its place:

loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to any property or the Work caused by, arising out of or resulting from fire or other peril, whether or not insured; and

SC-5.12 Delete Paragraph 5.12 of the General Conditions in its entirety and insert the following in its place:

Any insured loss under the policies of insurance required by Paragraphs 5.6 and 5.7 will be made payable directly to each of the insureds and additional insureds.

SC-5.13 Delete Paragraph 5.13 of the General Conditions in its entirety.

SC-5.14 Delete Paragraph 5.14 of the General Conditions in its entirety and insert the following in its place:

If OWNER has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the CONTRACTOR in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the OWNER party shall so notify the CONTRACTOR in writing within ten days after receipt of the certificates (or other evidence requested) required by Paragraph 2.7. CONTRACTOR shall provide to the OWNER such additional information in respect of insurance provided as the OWNER may reasonably request. If CONTRACTOR does not purchase or maintain all of the Bonds and insurance required by the Contract Documents, CONTRACTOR shall notify OWNER in writing of such failure to purchase prior to execution of the Contract, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the OWNER may elect to obtain equivalent Bonds or insurance to protect OWNER's interests at the expense of the CONTRACTOR who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

SC-5.15 Delete Paragraph 5.15 of the General Conditions in its entirety.

SC-6.1 Delete the first sentence of Paragraph 6.1 and substitute the following in lieu thereof:

Contractor shall supervise and direct the Work, using the Contractor's best skill and attention, in a good and workmanlike manner and in the best and most expeditious and economical manner consistent with the interests of the Owner, shall exercise the degree of care, skill and diligence in the performance of the Work in accordance with and consistent with industry standards for similar circumstances, shall utilize its best skill, efforts and judgment in furthering the interests of Owner, and shall furnish efficient business administration and supervision (the Contractor's "Standard of Care").

SC-6.3 Amend the first sentence of Paragraph 6.3 of the General Conditions to read as follows:

CONTRACTOR shall provide competent, suitably qualified personnel to construct the Work as required by the Contract Documents.

and as so amended Paragraph 6.3 remains in effect.

SC-6.11 Amend Paragraph 6.11 to include the following:

Contractor shall furnish satisfactory evidence that all obligations for labor and materials have been satisfied in the form of an Affidavit of Bills Paid as set forth in these Contract Documents. If Contractor fails to provide an affidavit as to any laborer or supplier, then Owner may, at Owner's option, pay directly any unpaid sums otherwise due to Contractor under this Contract or withhold from Contractor's unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payments to Contractor shall be resumed in full in accordance with the terms of this Contract. In no event shall the provisions of this paragraph be construed to impose any obligation upon Owner by either Contractor or its Surety.

SC-6.12 Delete Paragraph 6.12 of the General Conditions in its entirety and insert the following in its place:

INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION

- (A) Contractor shall not furnish or provide to Owner any Materials or Work that infringes a third party's intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like). Contractor shall not disclose or provide to Owner any information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas which Contractor does not own or otherwise have the right to disclose or provide to Owner.
- (B) Contractor represents and warrants that the Materials and the Work shall be free from third party claims of ownership and that Owner's right to own, use, or otherwise disclose such Materials and Work shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).
- (C) Contractor represents and warrants to Owner that all information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas disclosed or provided to Owner shall be free from third party claims of ownership and that Owner's right to own, use or otherwise disclose such information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).
- (D) Contractor represents and warrants that all processes or methods utilized by Contractor to provide its services to Owner are free from infringement of third party intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like) and that all products provided by Contractor to Owner are free from third party claims of infringement of intellectual property rights, including allegations that the product infringes the claims of the United States process patent in violation of the Process Patents Amendment Act of 1988. Contractor shall cooperate fully and promptly with Owner with respect to any notice of infringement or request for disclosure or response to a request for disclosure generated or received by Owner in connection with Contractor's Work pursuant to the Process Patents Amendment Act of 1988. To the extent that Contractor obtains products from third parties which it intends to provide to Owner, Contractor shall obtain agreements from Contractor's vendors to cooperate in connection with requests for disclosure generated or received by Owner pursuant to the Process Patents Amendment Act of 1988.
- (E) **CONTRACTOR SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ALL LIABILITY, CLAIMS, DEMANDS AND CAUSES OF ACTION BROUGHT BY THIRD PARTIES (AND ALL COSTS, EXPENSES, DAMAGES, LIABILITIES OR JUDGMENTS SUSTAINED OR INCURRED**

BY OWNER IN CONNECTION THEREWITH, INCLUDING THE COSTS OF INVESTIGATION AND REASONABLE ATTORNEYS FEES) ARISING OUT OF OR RELATING TO: (I) CONTRACTORS BREACH OF ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING INTELLECTUAL PROPERTY RIGHTS; (II) ALLEGATIONS THAT OWNER, BY USE OF THE MATERIALS, EQUIPMENT, OR THE WORK, INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (WHETHER IT BE CLAIMS OF IMPROPER USE OF CONFIDENTIAL INFORMATION, PATENT INFRINGEMENT, COPYRIGHT INFRINGEMENT, TRADEMARK INFRINGEMENT OR THE LIKE); (III) ALLEGATIONS THAT A THIRD PARTY OWNS INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DESCRIBED OR PROVIDED BY CONTRACTOR TO OWNER; (IV) ALLEGATIONS THAT OWNER'S OWNERSHIP OR USE OF INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DISCLOSED OR PROVIDED BY CONTRACTOR TO OWNER INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; (V) ALLEGATIONS THAT THE PROCESSES UTILIZED BY CONTRACTOR IN PROVIDING ITS SERVICES TO OWNER INFRINGE THIRD PARTY INTELLECTUAL PROPERTY RIGHTS (INCLUDING A VIOLATION OF THE PROCESS PATENTS AMENDMENT ACT OF 1988); OR (VI) THE COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES INCURRED BY OWNER IN ENFORCING THE INTELLECTUAL PROPERTY INDEMNITY INCLUDED IN THIS PARAGRAPH. THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL APPLY EVEN IF THE THIRD PARTY ALLEGES OR ESTABLISHES THAT OWNER WAS PARTIALLY NEGLIGENT OR OTHERWISE AT FAULT (E.G., WITHOUT LIMITATION, THAT OWNER WAS NEGLIGENT IN RETAINING CONTRACTOR'S SERVICES AND ACCEPTING MATERIALS, EQUIPMENT, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS FROM CONTRACTOR, OR THAT OWNER WAS NEGLIGENT IN FAILING TO ASCERTAIN WHETHER THE MATERIALS, EQUIPMENT, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS INFRINGED THE RIGHTS OF THIRD PARTIES). IF USE OF ANY PART OF SUCH EQUIPMENT, MATERIAL OR PROCESS IS LIMITED OR PROHIBITED, CONTRACTOR SHALL, AT ITS SOLE EXPENSE, PROCURE THE NECESSARY LICENSES TO USE THE INFRINGING EQUIPMENT, MATERIAL OR PROCESS, OR THE OWNER MAY, AT ITS OPTION, (1) ALLOW THE CONTRACTOR, WITH THE OWNER'S PRIOR WRITTEN APPROVAL, TO REPLACE SAME WITH SUBSTANTIALLY EQUAL BUT NOT INFRINGING EQUIPMENT, MATERIALS OR PROCESSES, OR MODIFY SAME TO BE NONINFRINGING; PROVIDED THAT ANY SUCH SUBSTITUTE OR MODIFIED EQUIPMENT, MATERIALS OR PROCESS SHALL MEET ALL THE REQUIREMENTS AND BE SUBJECT TO ALL THE PROVISIONS OF THIS CONTRACT, PROVIDED THAT SUCH REPLACEMENT OR MODIFICATIONS SHALL NOT MODIFY OR RELIEVE THE CONTRACTOR OF ITS OBLIGATIONS UNDER THIS CONTRACT; OR (2) OWNER MAY CANCEL THE CONTRACT.

SC-6.13 Add the following language at the end of Paragraph 6.13 of the General Conditions:

The Construction Drawings and Special Specifications include a Storm Water Pollution Prevention Plan in accordance with TCEQ requirements. The Contractor shall be responsible for obtaining permit coverage under the TCEQ's Construction Storm Water General Permit for all phases of project construction, and shall be further responsible for all activities necessary to initially meet and thereafter continuously maintain strict compliance with such permit as well as all applicable rules of TCEQ relating to Storm Water discharges (including, but not limited to, implementing the best management practices set forth in the Storm Water Pollution Prevention Plan for this project.

SC-6.14.3 Add Paragraph 6.14.3 as follows:

Contractor shall at all times observe and comply with federal, state, and local laws, ordinances, and regulations which in any manner affect this Contract of the Work; **INDEMNIFY AND SAVE OWNER HARMLESS AGAINST ANY CLAIM ARISING FROM VIOLATION OF ANY SUCH LAWS OR ORDINANCES WHETHER BY CONTRACTOR, ITS EMPLOYEES, AGENTS, PERMITTEES, OR LICENSEES**; and notify Owner promptly upon discovery of any instance of failure to comply with applicable laws, ordinances, and regulations.

SC-6.15 Add the following language at the end of Paragraph 6.15 of the General Conditions:

Contractor shall pay, when due, all taxes, fees, and contributions imposed by reason of prosecution of the Work **AND SHALL PROTECT, INDEMNIFY, AND HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM FAILURE TO MAKE TIMELY PAYMENT OF THESE AMOUNTS AND COMPLY WITH THE REPORTING, FILING, OR OTHER PROCEDURAL REQUIREMENTS WITH RESPECT TO PAYMENT.** Interest, penalties, or other liabilities arising from failure to make payments shall not be reimbursed to Contractor.

SC-6.20 Amend Paragraph 6.20 to include the following:

Contractor shall develop a written safety program, including provisions for trench safety, applicable to the Premises and to the Work, and enforce the safety program to the Work at all times. Further, Contractor shall comply with all applicable laws and regulations, including but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Contractor's employees. Contractor shall have complete and sole responsibility for protecting the safety and health of its employees and subcontractors and all other persons.

Contractor shall notify Owner, by telephone with prompt confirmation in writing, of lost time injuries and fatalities that occur on the Premises in connection with any work being performed under this Contract and shall provide Owner with reports of injuries and fatalities as Owner shall deem necessary, including, but not limited to, copies of all reports or other documents filed or provided in connection with injuries or fatalities to Surety or Contractor's insurers or the State of Texas.

No provision on this paragraph shall be interpreted as enlarging any legal duty the Owner may have to Contractor or to Contractor's agents, employees, subcontractors, or third parties, or as altering the status of Contractor as an independent contractor.

The Contractor shall include sufficient compensation in his bid for trench and project safety systems in accordance with all applicable local, state, and federal law, including, but not limited to, OSHA and all proposed OSHA rules and regulations published in the Federal Register related to trench and project safety systems if such are more stringent than rules and regulations of official record. All trench and project safety systems shall be designed by the Contractor's Registered Professional Engineer. The Contractor's Registered Professional Engineer shall be registered in the State of Texas.

The Construction Drawings, prepared by Brown & Gay Engineers, Inc., do not extend to or include designs or systems pertaining to the safety of the Contractor or its employees, agents or representatives in the performance of the Work. The seal of Brown & Gay, Inc.'s Registered Professional Engineer(s) on the BID DOCUMENTS AND SPECIFICATIONS OR CONSTRUCTION DRAWINGS or any written explanatory matter thereof, as prepared by Brown & Gay Engineers, Inc. does not extend to any such trench or project safety systems that may be necessary in the Contractor's completion of the Work.

THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER AND ENGINEER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS AND AGENTS FROM ANY AND ALL DAMAGES, COSTS (INCLUDING WITHOUT LIMITATIONS, LEGAL FEES, COURT COSTS, AND THE COST OF INVESTIGATION), JUDGMENTS OR CLAIMS BY ANYONE FOR PROPERTY DAMAGE, INJURY, OR DEATH TO PERSONS RESULTING FROM THE COLLAPSE OR FAILURE OF TRENCHES CONSTRUCTED UNDER THIS CONTRACT OR THE FAILURE TO PROVIDE SAFETY EQUIPMENT OR SAFETY SYSTEMS UNDER THIS CONTRACT.

CONTRACTOR ACKNOWLEDGES AND AGREES THAT THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION EXTENDS TO AND COVERS THE OWNER AND ENGINEER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, OR AGENTS NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, OR GROSS), EITHER BY ACT OR OMISSION, WITH RESPECT TO THE CONTRACTOR'S SAFETY EQUIPMENT OR SYSTEMS, OR THE LACK THEREOF, INCLUDING BUT NOT LIMITED TO INSPECTIONS, FAILURE TO ISSUE STOP WORK ORDERS, AND THE HIRING OF THE CONTRACTOR.

THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION EXTENDS TO THE OWNER AND ENGINEER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, OR AGENTS NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, OR GROSS) WHETHER SUCH NEGLIGENT ACTION OR OMISSION IS SOLE OR CONCURRENT WITH CONTRACTOR AND/OR OTHERS. THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL BE SUPPORTED BY CONTRACTUAL LIABILITY INSURANCE AS SPECIFIED IN THE GENERAL AND SUPPLEMENTARY CONDITIONS OF THE CONTRACT.

SC-6.31 Delete Paragraph 6.31 of the General Conditions in its entirety and insert the following in its place:

To the maximum extent allowed by law, the Contractor shall indemnify and hold harmless the Owner, its board, directors, officers, employees and agents, Engineer and its consultants, directors, officers, agents and employees and Developer and its directors, officers, agents and employees (collectively, the "Indemnitees"), from and against any and all claims, demands, suits, causes of action, settlements, liabilities, costs, expenses, fines, and judgments (including, without limitation, reasonable and necessary court costs, experts' fees and attorney's fees) (collectively, "Losses"), whether arising in equity, at common law, or by statute, including without limitation the Texas Deceptive Trade Practices Act (as amended) or similar statute of other jurisdictions, or under the law of contracts, torts (including, without limitation, negligence and strict liability without regard to fault) or property, of every kind or character (including, without limitation, claims for property damage, personal injury (including without limitation emotional distress), and economic loss), arising in favor of or brought by any of the Contractor's employees, agents, Subcontractors, Suppliers or representatives, or by any governmental agency or any other third party, based upon, in connection with, relating to or arising out of the Work, the Contractor's failure to comply with the Contract Documents, or the Contractor's actions or inactions under the Contract Documents, including without limitation any failure to pay taxes or failure to comply with any applicable law, and **EVEN IF ANY SUCH LOSSES ARE DUE IN PART TO ANY INDEMNITEES' SOLE OR CONCURRENT NEGLIGENCE OR OTHER FAULT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF STATUTE, OR STRICT LIABILITY WITHOUT REGARD TO FAULT.**

The foregoing indemnification obligation shall apply regardless of the amount of insurance coverage held by the Contractor, including without limitation any such coverage under any worker's compensation act, disability act, or other act or law which would limit the amount or type of damages, compensation, or benefits payable by or for the Contractor, and shall not be limited by any insurance carried or provided by the Contractor in accordance with the Contract Documents or otherwise.

Contractor shall and does hereby waive all causes of action it has for, and releases and forever discharges the Indemnitees from, Losses for injuries (including death) to any person or

damage to or destruction of any property sustained or alleged to have been sustained in connection with or arising out of or incidental to the Work.

Contractor shall promptly settle or cause the settlement of all Losses for which it is responsible pursuant to the Contract Documents. Upon becoming aware of facts which may constitute any Loss, Contractor shall immediately notify the Owner of the full particulars thereof, and the Owner may elect, by notice to Contractor, to have its representative accompany Contractor's representative in making settlement of the same.

Contractor agrees and covenants that it will not contest the validity or enforceability of any indemnity or exculpatory provision of this Contract on the basis that it has no notice or knowledge of any such provision or that any such provision is not "conspicuous."

Other provisions in the Contract Documents containing indemnities shall be deemed to be cumulative of and to operate independently of the indemnities provided above such that all indemnities provided in the Contract Documents shall be construed to grant indemnity to the Indemnitees to the fullest extent possible.

SC-6.32 Delete Paragraph 6.32 of the General Conditions in its entirety.

SC-7.1 Related Work at the Site. The following projects either have or will be contracted for in the vicinity of the proposed construction in connection with this contract:

- (1) Meadows at Cypress Creek Wastewater Treatment Plant
- (2) Meadows at Cypress Creek Townhomes

SC-8.5 and SC-8.10 Delete Paragraph 8.5 and 8.10 of the General Conditions in their entirety.

SC-9.3 Add the following language at the end of Paragraph 9.3 of the General Conditions:

The ENGINEER will provide a project representative for this project whose responsibilities are outlined in the attached Exhibit SC-A.

In addition to inspection by the OWNER and ENGINEER, the work under this contract will be subject to inspection by Harris County, the Harris County Flood Control District, and the Texas Commission on Environmental Quality.

SC-9.10 and SC-9.11 Insert the following:

In subclause (i) of the second sentence of Paragraph 9.10 of the General Conditions and in subclause (i) of the fifth sentence of Paragraph 9.11 of the General Conditions, delete the phrase "an appeal from Engineer's decision is taken within the time limits and in accordance with" and in each such case substitute in lieu thereof the following:

"either the Owner or the Contractor initiates"

SC-12.2 Add the following language at the end of Paragraph 12.2 of the General Conditions:

The CONTRACTOR and the OWNER agree that time is of the essence of this contract. The CONTRACTOR and the OWNER agree that a breach of this CONTRACT by failure to complete the Work in the specified time will cause harm to the OWNER, and further agree that the harm the OWNER would sustain and the actual measure of damages the OWNER would incur from the breach are incapable or very difficult of ascertainment. Therefore, the CONTRACTOR and the OWNER agree that for each and every day the work or any portion thereof shall remain uncompleted after the expiration of the time limit set in the Contract, or as extended under the provisions for Extension of Time in Article 12 of this Contract, CONTRACTOR shall be liable to OWNER for liquidated damages in the sum stipulated in the Standard Form of Agreement between OWNER and CONTRACTOR, which sum the parties agree is a reasonable forecast of the damages the OWNER will sustain per day that the work remains uncompleted and in no

way constitutes a penalty. The OWNER shall have the option to deduct and withhold the amount of any liquidated damages from any monies that the OWNER owes the CONTRACTOR or to recover such amount from the CONTRACTOR or the Sureties on the CONTRACTOR'S bond at the CONTRACTOR'S expense.

SC-13.4 Add the following language at the end of Paragraph 13.4 of the General Conditions:

CONTRACTOR shall give a minimum of two working days' notice to the independent testing laboratory employed by the OWNER when requesting testing services and a minimum of 4 working hours' notice to the independent testing laboratory employed by the OWNER for cancellation of scheduled testing services. CONTRACTOR will pay all charges for retesting required due to CONTRACTOR'S failure to pass initial tests, and for charges resulting from CONTRACTOR'S improper cancellation of scheduled testing services. The OWNER shall have the option to deduct and withhold the amount of any retesting charges and charges for improper cancellation of scheduled testing services from any monies due to the CONTRACTOR or recover such amount from the CONTRACTOR or the CONTRACTOR'S Surety at the CONTRACTOR'S expense.

SC-13.12 Amend Paragraph 13.12 of the General Conditions to include the following:

SC-13.12.1,2, and 3 Amend Paragraphs 13.12.1,2,and 3 of the General Conditions to substitute the words "final completion" for the words "substantial completion" whenever the words "substantial completion" are used and as so amend these Paragraphs remain in effect.

The one-year correction period will commence at the time that the project is at the final completion stage and has been accepted by Harris County, the Harris County Flood Control District, and the Texas Commission on Environmental Quality, the ENGINEER, and the OWNER.

SC-14.2 Amend Paragraph 14.2 of the General Conditions to include the following:

The CONTRACTOR shall make arrangements to meet the ENGINEER'S Project Representative at the job site to determine the status of work completed for the project prior to the due date for submittal of each monthly application for payment. The due dates for monthly applications for payment will be determined at the Pre-construction Conference or outlined in the Notice to Proceed. The status of work completed as agreed upon between the ENGINEER'S Project Representative and the CONTRACTOR will be the basis for the application for payment submitted to the ENGINEER'S Project Manager. Deviations from the agreed status of work completed in the application for payment may result in processing delays or disapproval of the estimate. In addition, payment may be delayed until the next payment cycle on applications for payment received after the prescribed submittal due dates. If the CONTRACTOR believes that an oversight was made in the agreed status of work completed, he should contact the ENGINEER'S Project Manager prior to submitting an application for payment that is not in one hundred percent compliance with the agreed status of work completed. Unless specific approval is granted by the Owner, payment will not be approved for materials delivered and stored at the site but not incorporated in the work.

An amount equal to ten percent of the amount of each monthly estimate will be retained by the OWNER. CONTRACTOR shall not include payment for retainage without prior approval of the ENGINEER'S Project Manager.

All monthly applications for payment shall Waiver and Lien Release forms and all required Storm Water Pollution Prevention Plan inspection and maintenance reports. Absence of an of these forms or any required Storm Water Pollution Prevention Plan inspection and maintenance reports from a monthly application for payment may result in processing delays or disapproval of the estimate.

SC-14.4 Delete Paragraph 14.4 in entirety and insert the following paragraph:

ENGINEER will, within fifteen days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Thirty days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

SC-14.8 and 14.9 Delete Paragraphs 14.8 and 14.9 of the General Conditions which address Substantial Completion in their entirety.

SC-14.10.2 Delete Paragraph 14.10.2 of the General Conditions in its entirety.

SC-14.11 Amend Paragraph 14.11 of the General Conditions to include the following:

Final inspections will also be conducted by the governments entities listed in SC-9.3. It is intended that all inspections by governmental entities pass on the dates of the inspections. CONTRACTOR shall have crews ready and prepared to remedy any and all problems or deficiencies on the dates of the inspections. The CONTRACTOR will be notified by the ENGINEER as to the dates and times of the inspections immediately upon their being scheduled by each governmental entity.

SC-14.12 Amend Paragraph 14.12 of the General Conditions to include the following:

The final application for payment shall include consent of surety to release final payment, affidavit of bills paid, waiver and release of liens, contractors warranty, any required O&M manuals, any required Storm Water Pollution Prevention Plan inspection and maintenance reports and record drawings. The final application for payment shall not be submitted for approval until the satisfactory completion of all testing and inspection requirements.

SC-15.2 Delete Paragraph 15.2 of the General Conditions in its entirety and insert the following in its place:

Upon occurrence of any one or more of the following events:

15.2.1 if CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6) seven (7) days after written notification from the OWNER, or the ENGINEER;

15.2.2 if CONTRACTOR continues to disregard Laws and Regulations of any public body having jurisdiction seven (7) days after written notification from the OWNER, ENGINEER, or said public body;

15.2.3 if CONTRACTOR continues to disregard the authority of ENGINEER, or if the CONTRACTOR fails to comply with the orders of the ENGINEER, when such orders are consistent with the Contract Documents, seven (7) days after written notification from the OWNER, or the ENGINEER; or

15.2.4 if CONTRACTOR abandons and fails or refuses to resume work or if CONTRACTOR otherwise continues to violate in any substantial way any provisions of the Contract Documents seven (7) days after written notification from the OWNER, or the ENGINEER;

OWNER may, in the case where performance and payment bonds exist, notify the Surety on these bonds in writing to complete the Work, and a copy of said notice shall be delivered to the CONTRACTOR.

After receiving copy of said notice to Surety to complete the Work, the CONTRACTOR shall be excluded from the site and shall not remove from the site any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the Work, may be held for use on the Work by the OWNER or the Surety on the performance bond, or another contractor in completion of the Work; and the CONTRACTOR shall not receive any rental or credit therefor (except when used in connection with Extra Work, where credit shall be allowed as provided for under Paragraph 11), it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement. In any case, CONTRACTOR shall not be entitled to receive any further payments until the Work is finished.

Where there is no performance bond provided or in case the Surety should fail to commence compliance with the notice to complete the Work hereinabove provided for, within seven (7) days after service of such notice, then the OWNER may provide for completion of the work in either of the following elective manners:

- A. The OWNER may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as said OWNER may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said CONTRACTOR, and expense so charged shall be deducted and paid by the OWNER out of such moneys as may be due, or that may thereafter at any time become due to the CONTRACTOR under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the CONTRACTOR, then said CONTRACTOR shall receive the difference. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completed by said CONTRACTOR, then the CONTRACTOR and /or his Surety shall pay the amount of such excess to the OWNER; or
- B. The OWNER under sealed bids, after seven (7) days notice published one or more times in a newspaper having general circulation in the county of the location of the work, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In case any increase in cost to the OWNER under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the CONTRACTOR and the Surety shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this contract, the CONTRACTOR and/or his Surety shall be credited therewith.

When the work has been completed the CONTRACTOR and his Surety shall be so notified and Certificates of Completion and Acceptance, as provided in Paragraph 14.13, shall be issued. A complete itemized statement of the contract account, certified to by the ENGINEER as being correct, shall then be prepared and delivered to the CONTRACTOR and his Surety, whereupon the CONTRACTOR and/or his Surety, or the OWNER as the case may be, shall pay the balance due as reflected by said statement, within thirty (30) days after the date of such Certificate of Completion.

In the event the statement of accounts shows that the cost to complete the Work is less than that which would have been the cost to the OWNER had the Work been completed by the CONTRACTOR under the terms of this contract; or when the CONTRACTOR and/or his Surety pays the balance in full shown to be due by them to the OWNER, then all machinery, equipment, tools, materials or supplies left on the site of the Work shall be turned over to the

CONTRACTOR and/or his Surety. Should the cost to complete the Work exceed the contract price, and the CONTRACTOR and/or his Surety fail to pay the amount due the OWNER within the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the Work, notice thereof, together with an itemized list of such equipment and materials shall be mailed to the CONTRACTOR and his Surety at the respective addresses designated in the contract, provided, however, that actual written notice is given in any manner will satisfy this condition. After mailing, or other giving of such notice, such property shall be held at the risk of the CONTRACTOR and his Surety subject only to the duty of the OWNER to exercise ordinary care to protect such property. After ten (10) days from the date of said notice the OWNER may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the CONTRACTOR and his Surety. Such sale may be made at either public or private sale, with or without notice, as the OWNER may elect. The OWNER shall release any machinery, equipment, tools, materials, or supplies, which remain on the site of the Work, and belong to persons other than the CONTRACTOR or his Surety, to their proper owners. The books on all operations provided herein shall be open to the CONTRACTOR and his Surety.

Cost by the OWNER to complete the Work as referenced herein, shall include, but not be limited to, all expenses for labor, machinery, equipment, tools, materials, and supplies along with any claims, losses, and damages sustained by OWNER arising out of or resulting from completing the Work.

Such expenses, claims, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER will not be required to obtain the lowest price for the Work performed.

SC-17.2.2 Add the following language to the end of Paragraph 17.2.2 of the General Conditions:

Contract time will be determined based on Calendar Days. A "Calendar Day" is defined as any day including Saturdays, Sundays, or legal holidays, in which weather or other conditions, not under the control of the CONTRACTOR, will permit construction of the principal units of the work for a period of not less than seven hours between 7:00 a.m. and 6:00 p.m.

END OF SUPPLEMENTARY CONDITIONS

**EXHIBIT SC-A TO
SUPPLEMENTARY CONDITIONS**

**A LISTING OF THE DUTIES, RESPONSIBILITIES AND
LIMITATIONS OF AUTHORITY OF THE PROJECT REPRESENTATIVE.**

ENGINEER shall furnish a Project Representative (PR) to assist ENGINEER in observing performance of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the PR, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of CONTRACTOR; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the PR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

PR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding PR's actions. PR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. PR's dealings with subcontractors shall be only through or with the full knowledge and approval of CONTRACTOR. PR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of PR

1. *Conferences and Meetings:* Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings.
2. *Liaison:*
 - a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
 - b. Assist in obtaining from OWNER additional details or information when directed by Engineer and when required for proper execution of the Work.
3. *Shop Drawings and Samples:* Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.

4. *Review of Work, Rejection of Defective Work, Inspections and Tests:*
 - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever PR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that PR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
5. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
6. *Modifications:* Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with PR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
7. *Records:* Maintain a diary or log book that reflects project data required to evaluate change order requests, time extension requests, and changed project conditions. The documentations shall include any significant on-site project meetings, and daily observations to ensure construction conformance with contract documents.
8. *Reports:*
 - a. Furnish ENGINEER periodic reports as required of progress of the Work.
 - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
 - c. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.
9. *Payment Requests:* Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

10. *Completion:*

- a. Before ENGINEER issues a Certificate of Final Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
- b. Conduct final inspection in the company of OWNER, and CONTRACTOR and prepare a final list of items to be completed or corrected.
- c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. Limitations of Authority

Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of the CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not authorize OWNER to occupy the Project in whole or in part.
7. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER

STANDARD SPECIFICATIONS

PART I GENERAL

- A. All work to be performed under this contract is to be performed in accordance with these Standard Specifications, unless these Standard Specifications are superseded by the attached Special Specifications.

1. Harris County, Texas.
 - a. Regulations of Harris County, Texas for the Approval and Acceptance of Infrastructure.
2. Harris County Flood Control District.
 - a. 2005 Standard Specifications Book for Harris County Flood Control District
3. Texas Commission on Environmental Quality (TCEQ)
 - a. Rules and Regulations for Water Systems and Sanitary Sewers

These forms in their current issue with all revisions and addenda, are made a part of the Contract Documents with the same force and effect as though bound herein. All construction performed under these Contract Documents shall be in accordance with the terms of these items used in conjunction with the other sections of the Contract Documents.

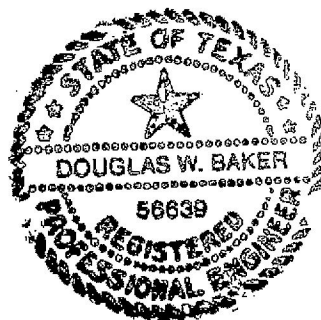
Copies of each of the above described items may be examined at the office of Brown & Gay Engineers, Inc., 10777 Westheimer, Suite 400, Houston, Texas 77042.

Nantucket Housing, LLC

ORIGINAL

Contract Documents and Specifications
for Construction of

**Meadows at Cypress Creek Wastewater
Treatment Plant Phase One**



Douglas W. Baker
10-23-15

October 2015



TBPE Registration No. F-1046

10777 Westheimer, Suite 400
Houston, Texas 77042
281-558-8700

Contract Documents and Specifications
for Construction of

**Meadows at Cypress Creek Wastewater
Treatment Plant Phase One**

CONTENTS

I.	INVITATION TO BIDDERS
II.	INSTRUCTIONS TO BIDDERS
III.	BID
IV.	STANDARD FORM OF AGREEMENT
V.	PERFORMANCE BOND (Not required)
VI.	PAYMENT BOND (Not required)
VII.	MAINTENANCE BOND (Not required)
VIII.	CONTRACTOR'S WAIVERS AND LIEN RELEASES <ul style="list-style-type: none">• Conditional Waiver and Release on Progress Payment• Unconditional Waiver and Release on Progress Payment• Conditional Waiver and Release on Final Payment• Unconditional Waiver and Release on Final Payment
IX.	STANDARD GENERAL CONDITIONS
X.	SUPPLEMENTARY CONDITIONS
XI.	STANDARD SPECIFICATIONS
XII.	TECHNICAL SPECIFICATIONS

INVITATION TO BIDDERS

Sealed bids addressed to **Nantucket Housing, LLC**, will be received in the office of Brown & Gay Engineers, Inc., 10777 Westheimer, Suite 400, Houston, Texas, 77042 until **2:30 p.m., Monday, August 31, 2015**, at which time all bids will be opened privately for the furnishing of all material, equipment, labor and supervision necessary or incidental to the **"Construction of Meadows at Cypress Creek Wastewater Treatment Plant Phase One."**

Scope of Project:

Contractor to furnish and install a proposed 0.0275 MGD prefabricated WWTP and site work associated with the installation. Work to include but not limited to supply of a 0.0275 MGD prefabricated WWTP Facility including aeration chambers, sludge aerobic digester unit (dual stage), air distribution system, walkways, stairs with landings, airlift pumps, interconnecting piping, field painting, water lines and hose bibs for non-potable system, and blowers as required in the drawings and specifications for 0.0275 MGD prefabricated WWTP. Work shall also include offloading, positioning and hooking up the 0.0275 MGD prefabricated WWTP to the existing yard piping.

There will be a pre-bid meeting on **Friday, August 21, 2015 at 10:00 a.m.** at the office of the Engineer. Attendance is not mandatory.

Plans and bid documents are available for download at no charge at www.civcastusa.com search **2913-02 (FL)**.

There will be no bid security required for this project. The Owner reserves the right to reject any or all bids.

INSTRUCTIONS TO BIDDERS

1. Defined Terms.

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8)(1990 Edition) have the meanings assigned to them in the General Conditions.

Certain additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

1.1. Bidder - one who submits a Bid directly to Owner as distinct from a sub-bidder, who submits a bid to a Bidder.

1.2. Issuing Office - the office from which the Bidding Documents are prepared and where the bidding procedures are to be administered. For this project the issuing office is Brown & Gay Engineers, Inc., 10777 Westheimer, Suite 400, Houston, Texas 77042 (phone 281-558-8700).

1.3. Successful Bidder - the most qualified, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

1.4. Owner - the Owner is understood to be **Nantucket Housing, LLC**. Funding for the project will be provided in accordance with the terms and conditions described in the Special Conditions of Agreement.

2. Copies of Bidding Documents.

2.1. Complete sets of the Bidding Documents in the number and for the purchase price, if any, stated in the Invitation to Bidders may be obtained from www.civcastusa.com.

2.2. Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.3. Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

3. Qualifications of Bidders.

To demonstrate qualifications to perform the Work, each Bidder **must** submit with their bid a Qualification Statement form detailing written evidence such as financial data, proposed sub-contractors, present commitments, previous experience, equipment lists, evidence of authority to conduct business in the State of Texas and other such data as required to evaluate the Bidder's capability to perform the Work described in the Bidding Documents. Contractor must use attached form provided by the Engineer as **Exhibit "A."**

4. Examination of Contract Documents and Site.

4.1. It is the responsibility of each Bidder before submitting a Bid:

4.1.1. To examine thoroughly the Contract Documents and other related data identified in the Bidding Documents (including "technical data" referred to below);

4.1.2. To visit the site to become familiar with and satisfy Bidder as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work;

4.1.3. To consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work;

4.1.4. To study and carefully correlate Bidder's knowledge and observations with the Contract Documents and such other related data; and

4.1.5. To promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.

4.2. Reference is made to the Supplementary Conditions for identification of:

4.2.1. Those reports of explorations and tests of subsurface conditions at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may not rely upon the data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

4.2.2. Copies of such subsurface reports will be made available by Owner to any Bidder on request. Those reports are not part of the Contract Documents and are not a warranty of surface or subsurface conditions. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" contained therein. Bidder acknowledges that Owner and Engineer disclaim any responsibility for the accuracy, true location, and extent of the soils, surface, and subsurface investigations that have been prepared by others and disclaim responsibility for Bidder's interpretation of or conclusions or opinions drawn from such reports, e.g., without limitations, projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water. Bidder is expected to examine the site and such reports and then decide for itself the character of the materials to be encountered.

4.3. Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof or for Bidder's interpretation of or conclusions or opinions drawn from such information and data. The Contractor is advised to coordinate closely with Engineer and Operator prior to the commencement of any underground construction activities. Such information and data is not a part of the Contract Documents and is not a warranty of subsurface conditions.

4.4 Before submitting a Bid, each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

4.5 On request, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder must fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests and studies.

4.6 Reference is made to the Supplementary Conditions for the identification of the general nature of work that is to be performed at the site by the Owner or others (such as utilities and other prime contractors) that relates to the work for which a Bid is to be submitted. On request, Owner will provide, to each Bidder for examination, access to or copies of Contract Documents (other than portions thereof related to price) for such work.

4.7 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, method, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by Engineer is acceptable to Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

5. Availability of Lands for Work, etc.

The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

6. Interpretations and Addenda.

6.1. All questions about the meaning or intent of the Bidding Documents are to be directed to Engineer. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda. All parties recorded by the Engineer as having received the Bidding Documents will be called and the addendum will be mailed or transmitted by electronic facsimile. The eligible party has the option to pick up the addendum at the Engineer's Office and sign required documentation list. Questions received less than 72 hours prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6.2. Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer.

7. Bid Security (NOT REQUIRED)

8. Contract Times.

The number of days (working days) within which, or the dates by which, the Work is to be completed and ready for final payment are set forth in the Agreement (or incorporated therein by reference to the attached Bid Form).