

**CITY OF SPANISH FORT
CITY COUNCIL MEETING
AGENDA**

Regular Meeting
August 5, 2024
Spanish Fort Community Center
6:00 p.m.

- I. CALL TO ORDER
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE
- V. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETINGS

Work Session July 15, 2024
Regular Meeting July 15, 2024
Special Work Session July 22, 2024

- VI. REPORTS OF COMMITTEES AND OFFICERS
- VII. PUBLIC PARTICIPATION
- VIII. ANNOUNCEMENTS

Congressman Jerry Carl has sent out a survey to Spanish Fort residents asking for feedback about our postal service. Please check your email inbox and fill out the survey. If you did not receive a survey, please send your comments to jerry.carl@mail.house.gov. It is important the Congressman and his staff receive your feedback.

The City of Spanish Fort Administrative Offices and the Spanish Fort Public Library will be closed on Monday, September 2, 2024, to celebrate the Veteran's Day Holiday. The City Council Work Session and City Council Meeting scheduled for Monday, September 2, 2024, will be held on Tuesday, September 3, 2024, with the Work Session scheduled for 4:00 p.m. and the City Council Meeting scheduled for 6:00 p.m.

On Sunday, September 29, 2024, the Mobile Pops Band will be performing at the Spanish Fort Community Center on Sunday, at 6:00 p.m. FAME, Fine Arts, Music & Entertainment will have an art guild show prior to the concert from 5:00 p.m. to 6:00 p.m.

- IX. OLD BUSINESS
- X. NEW BUSINESS
- XI.

Ordinance No. 668-2024-----An Ordinance Granting a Non-exclusive Franchise to Mediacom Southeast, LLC, for the Purpose of Maintaining Distribution Lines for the Provision of Cable Television within the Public Rights-of-Way of the City of Spanish Fort

Ordinance No. 673-2024---- An Ordinance Amending Ordinance No. 51-96 of the City of Spanish Fort Changing the Zoning Classification of Certain Property Located at 30810 State Highway 181 from R-1 to B-3

Ordinance No. 674-2024----An Ordinance Annexing Certain Property into the Corporate Limits of the City of Spanish Fort, Alabama

Ordinance No. 675-2024----An Ordinance Regulating the Keeping of Animals within the Corporate Limits of the City of Spanish Fort

Resolution No. 1429-2024---A Resolution Awarding a Bid for the Spanish Fort Central Fire Station

Resolution No. 1430-2024---A Resolution Awarding a Bid for the Spanish Fort Dog Park

Resolution No. 1431-2024---A Resolution Awarding a Bid for the Denise Lane Drainage Modifications in the City of Spanish Fort

Resolution No. 1432-2024---A Resolution Disposing of Surplus Property

Resolution No. 1433-2024---A Resolution Authorizing the Mayor of the City of Spanish Fort, Alabama, to Make Application for the Edward Byrne Memorial Justice Assistance Grant, Administered by the ADECA Law Enforcement and Traffic Safety Division

Resolution No. 1435-2024---A Resolution Amending the Spanish Fort Police Department Policy Manual

Resolution No. 1436-2024---A Resolution Authorizing the Mayor to Enter into an Agreement with Sasser Electrical Services, Inc., for Installation of LED Lighting at the Spirit Park Tennis Courts

Resolution No. 1437-2024---A Resolution Authorizing the Mayor to Enter into an Agreement with MDH Foundation Repair for Leveling of Sidewalks at Spirit Park in the City of Spanish Fort

XII. ADJOURN TO NEXT MEETING
Work Session and Regular Meeting, August 19, 2024

Spanish Fort City Council

Minutes, Work Session, Monday, July 15, 2024

The City Council of the City of Spanish Fort, Alabama, met Monday, July 15, 2024, at 4:07 p.m., at the Spanish Fort Community Center, that being the scheduled date, time and place of such meeting.

The following Councilmembers were present: Curt Smith, Carl Gustafson, Shane Perry, J. R. Smith, Mary Brabner and Mayor McMillan. A quorum being present, the work session proceeded.

The Council discussed general municipal business.

City Attorney David Conner made a recommendation that the City Council go into executive session in accordance with the Alabama Open Meetings Act to discuss the general reputation and character of certain individuals and, subject to the limitations set out therein, to discuss the job performance of certain public employees; and to discuss the legal ramifications of and legal options for pending litigation, controversies not yet being litigated, but imminently likely to be litigated, or imminently likely to be litigated if the governmental body pursues a proposed course of action. Mr. Conner made an oral declaration that the exceptions under the Open Meetings Act are applicable to the planned discussion. A motion was made by Councilmember J. R. Smith and seconded by Councilmember Brabner to go into executive session at 4:07 p.m. to discuss the aforementioned matters. Mayor McMillan called for the polling of votes. Voting "aye" were Councilmembers Curt Smith, Gustafson, Perry, J. R. Smith, Brabner and Mayor McMillan. Voting "nay" were none. Mayor McMillan announced that the executive session would last approximately 45 minutes and that the Work Session would resume upon the conclusion of the executive session.

At 5:20 p.m., City Clerk Rebecca A. Gaines announced the executive session would continue for approximately 15 more minutes.

The Council reconvened at 5:35 p.m.

The Council discussed general municipal business.

There being no further business before the Council, the work session adjourned at 5:36 p.m.

Approved this _____ day of August 2024.

Rebecca A. Gaines, CMC
City Clerk

Spanish Fort City Council

Minutes, Work Session, Monday, July 22, 2024

The City Council of the City of Spanish Fort, Alabama, met Monday, July 22, 2024, at 5:00 p.m., at the Spanish Fort Community Center, that being the scheduled date, time and place of such meeting.

The following Councilmembers were present: Curt Smith, Carl Gustafson, Shane Perry, J. R. Smith, Mary Brabner and Mayor McMillan.

Mayor McMillan stated that due notice of the time, place and purpose of this meeting had been given to all members of the City Council and that each member had signed the acceptance of service of said notice, waiving all irregularities, if any, in said notice. The notice and acceptance of service and waiver signed by each member was ordered inserted into the minutes of this meeting at the end thereof. (See Attachment.)

A quorum being present, the work session proceeded.

The Council discussed general municipal business.

City Attorney David Conner made a recommendation that the City Council go into executive session in accordance with the Alabama Open Meetings Act to discuss the general reputation and character of certain individuals and, subject to the limitations set out therein, to discuss the job performance of certain public employees; and to discuss the legal ramifications of and legal options for pending litigation, controversies not yet being litigated, but imminently likely to be litigated, or imminently likely to be litigated if the governmental body pursues a proposed course of action. Mr. Conner made an oral declaration that the exceptions under the Open Meetings Act are applicable to the planned discussion. A motion was made by Councilmember J. R. Smith and seconded by Councilmember Brabner to go into executive session at 5:05 p.m. to discuss the aforementioned matters. Mayor McMillan called for the polling of votes. Voting "aye" were Councilmembers Curt Smith, Gustafson, Perry, J. R. Smith, Brabner and Mayor McMillan. Voting "nay" were none. Mayor McMillan announced that the executive session would last approximately one hour and that the Work Session would adjourn from executive session and upon the conclusion of the executive session.

There being no further business before the Council, the work session adjourned at 5:58 p.m.

Approved this _____ day of August 2024.

Rebecca A. Gaines, CMC
City Clerk

**Spanish Fort City Council
Minutes, Regular Meeting, July 15, 2024**

CALL TO ORDER

The City Council of the City of Spanish Fort, Alabama, met Monday, July 15, 2024, at 6:00 p.m., at the Spanish Fort Community Center, that being the scheduled date, time and place of such meeting.

ROLL CALL

The following Councilmembers were present: Curt Smith, Carl Gustafson, Shane Perry, J. R. Smith, Mary Brabner and Mayor McMillan.

INVOCATION AND PLEDGE OF ALLEGIANCE

Councilmember Shane Perry led the invocation and Pledge of Allegiance.

APPROVAL OF MINUTES OF PREVIOUS MEETINGS

The minutes of the Meeting and Work Session of July 1, 2024, were distributed to each member, and Mayor McMillan called for any corrections. Mayor McMillan declared the minutes approved as written.

REPORTS OF COMMITTEES AND OFFICERS

Carl Gustafson reported the newly appointed Junior City Council met on Monday, July 8, 2024. Haley Few was elected as chairperson, and Darby Smith was elected as vice chairperson.

City Attorney David Conner announced an additional item was added to the agenda. Resolution No. 1434-2024, a resolution authorizing the City of Spanish Fort to join the State of Alabama and other local Governments as participants in current and future opioid settlements was added.

PUBLIC PARTICIPATION

Mr. Kevin Wood of 12132 Squirrel Drive addressed the Council regarding lighting and maintenance at Spirit Park. Mr. Wood informed the Council that lights are out on some tennis courts, the trash cans were overflowing and bathrooms were very dirty on weekends.

Mr. Harry Holloway of 30925 Blakeley Way addressed the Council regarding traffic increases on Blakeley Way and the maintenance of a culvert and area on his property. Mr. Holloway requested the City cut the grass around his culvert, stating the City maintains an area near the sidewalk bridge, but does not maintain his property across the street.

ANNOUNCEMENTS

Congressman Jerry Carl has sent out a survey to Spanish Fort residents asking for feedback about our postal service. Please check your email inbox and fill out the survey. If you did not receive a survey, please send your comments to jerry.carl@mail.house.gov. It is important the Congressman and his staff receive your feedback.

OLD BUSINESS

There was none.

NEW BUSINESS

Presentation of Employee Anniversary Plaques

Mayor McMillan presented a 5 year anniversary plaque to Librarian Cheryl Minchew and a 15 year anniversary plaque to Fire Chief Roger Few.

Presentation from Tracy Roberts, Spanish Fort Public School Commission

Tracy Roberts, Chairperson of the Spanish Fort Public School Commission, reported on the activities of the Public School Commission in the previous year. Ms. Roberts reported on the income and expenditures of the 3 mill tax established in 2020 for the Spanish Fort School District. The School Commission expends funds for academic programs, school enhancements and enrichment not otherwise funded by local, state or federal funds. All funds are vetted through the Baldwin County Public School Superintendent's Office. Approved budgets for the 2024-2025 fiscal year total \$1,551,423 for all 5 schools in the Spanish Fort school district. The 3 mill fund revenues are expected to increase by 13% as population and property values increase, and the fund has a healthy reserve due to conservative spending in the early years of the Commission and increased revenue.

Ordinance No. 668-2024

Mayor McMillan presented Ordinance No. 668-2024, an Ordinance granting a non-exclusive franchise to Mediacom Southeast, LLC, for the purpose of maintaining distribution lines for the provision of cable television within the public rights-of-way of the City of Spanish Fort. David Conner explained the proposed ordinance. Discussion followed.

Ordinance No. 670-2024

Mayor McMillan presented Ordinance No. 670-2024, an Ordinance granting a non-exclusive franchise to Comcast of Alabama, LLC, for the purpose of maintaining distribution lines for the provision of cable television within the public rights-of-way of the City of Spanish Fort. David Conner explained the proposed ordinance and submitted an amended version of the ordinance. Discussion followed.

A motion was made by Councilmember J. R. Smith and seconded by Councilmember Curt Smith to adopt Ordinance No. 670-2024 as amended. Discussion followed. Mayor McMillan called for a polling of votes. Voting "aye" were Councilmembers Curt Smith, Gustafson, Perry, Brabner, J. R. Smith and Mayor McMillan. Voting "nay" were none. Mayor McMillan declared the Ordinance adopted.

Ordinance No. 672-2024

Mayor McMillan presented Ordinance No. 672-2024, an Ordinance amending Ordinance No. 51-96 of the City of Spanish Fort changing the zoning classification of certain property known as the Kirby Property to a Planned Unit Development ("the Kirby P.U.D.") and pre-zoning and establishing the zoning classification of certain property to be annexed as part of the Kirby P.U.D as a Planned Unit Development. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember J. R. Smith and seconded by Councilmember Gustafson to adopt Ordinance No. 672-2022, subject to compliance with all requirements of current and future traffic studies as required by the City of Spanish Fort Subdivision Regulations. Discussion followed. Mayor McMillan called for a polling of votes. Voting "aye" were Councilmembers Curt Smith, Gustafson, Perry, Brabner, J. R. Smith and Mayor McMillan. Voting "nay" were none. Mayor McMillan declared the Ordinance adopted.

Ordinance No. 673-2024

Mayor McMillan introduced Ordinance No. 673-2024, amending Ordinance No. 51-96 of the City of Spanish Fort changing the zoning classification of certain property located at 30810 State Highway 181 from R-1 to B-3. David Conner explained the proposed resolution. Discussion followed.

Mayor McMillan announced a public hearing will be held at the Monday, August 5, 2024, City Council meeting to hear comments from those in favor of or in opposition to the proposed ordinance.

Resolution No. 1421-2024

Mayor McMillan presented Resolution No. 1421-2024, a resolution amending the Police Department Policy Manual. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember Gustafson and seconded by Councilmember Brabner to adopt Resolution No. 1421-2024. Discussion followed. Mayor McMillan called for a polling of votes. Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, Brabner, J. R. Smith and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

Resolution No. 1423-2024

Mayor McMillan presented Resolution No. 1423-2024, a resolution authorizing the Mayor to enter into an agreement with NRT Specialty Trailers for portable restroom facilities at Integrity Park. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember Curt Smith and seconded by Councilmember Perry to adopt Resolution No. 1423-2024. Discussion followed. Mayor McMillan called for a polling of votes. Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, Brabner, J. R. Smith and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

Resolution No. 1424-2024

Mayor McMillan presented Resolution No. 1424-2024, a resolution authorizing the Mayor to enter into an agreement with Sasser Electrical Systems, Inc., for installation of LED lighting at Spanish Fort Community Center. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember Curt Smith and seconded by Councilmember J. R. Smith to adopt Resolution No. 1424-2024. Discussion followed. Mayor McMillan called for a polling of votes. Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, Brabner, J. R. Smith and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

Resolution No. 1425-2024

Mayor McMillan presented Resolution No. 1425-2024, a resolution awarding a bid for the Spanish Fort Community Center elevator addition. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember Perry and seconded by Councilmember Brabner to adopt Resolution No. 1425-2024. Discussion followed. Mayor McMillan called for a polling of votes. Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, Brabner, J. R. Smith and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

Resolution No. 1426-2024

Mayor McMillan presented Resolution No. 1426-2024, a resolution authorizing the Mayor to enter into an agreement with Hunter Security for the installation of security measures at the Spanish Fort Community Center. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember Gustafson and seconded by Councilmember Brabner to adopt Resolution No. 1426-2024. Discussion followed. Mayor McMillan called for a polling of votes. Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, Brabner, J. R. Smith and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

Resolution No. 1427-2024

Mayor McMillan presented Resolution No. 1427-2024, a resolution authorizing the Mayor to execute an agreement between the City of Spanish Fort and Sawgrass Consulting, LLC. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember Brabner and seconded by Councilmember Perry to adopt Resolution No. 1427-2024. Discussion followed. Mayor McMillan called for a polling of votes. Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, Brabner, J. R. Smith and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

Resolution No. 1428-2024

Mayor McMillan presented Resolution No. 1428-2024, a resolution authorizing the Mayor to enter into an agreement with Mobile Fence Company for installation of fencing at the Spanish Fort dog holding facility. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember J. R. Smith and seconded by Councilmember Perry to adopt Resolution No. 1428-2024. Discussion followed. Mayor McMillan called for a polling of votes. Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, Brabner, J. R. Smith and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

Resolution No. 1429-2024

Mayor McMillan presented Resolution No. 1429-2024, a resolution awarding a bid for the Spanish Fort Central Fire Station. David Conner explained the proposed resolution. Discussion followed.

Resolution No. 1430-2024

Mayor McMillan introduced Resolution No. 1430-2024, a resolution awarding a bid for the Spanish Fort Dog Park. David Conner explained the proposed resolution. Discussion followed.

Resolution No. 1431-2024

Mayor McMillan introduced Resolution No. 1431-2024, a resolution awarding a bid for the Denise Lane Drainage Modifications in the City of Spanish Fort. David Conner explained the proposed resolution. Discussion followed.

Resolution No. 1432-2024

Mayor McMillan introduced Resolution No. 1432-2024, a resolution disposing of surplus property. David Conner explained the proposed resolution. Discussion followed.

Resolution No. 1433-2024

Mayor McMillan introduced Resolution No. 1433-2024, a resolution authorizing the Mayor of the City of Spanish Fort, Alabama, to make application for the Edward Byrne Memorial Justice Assistance Grant, administered by the ADECA Law Enforcement and Traffic Safety Division. David Conner explained the proposed resolution. Discussion followed.

Resolution No. 1434-2024

Mayor McMillan introduced Resolution No. 1434-2024, a resolution authorizing the City of Spanish Fort to join the State of Alabama and other local Governments as participants in current and future opioid settlements. Discussion followed.

A motion was made by Councilmember Curt Smith and seconded by Councilmember J. R. Smith to adopt Resolution No. 1434-2024. Discussion followed. Mayor McMillan called for a polling of votes. Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, Brabner, J. R. Smith and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

ADJOURNMENT

There being no further business before the Council, the meeting adjourned at 6:48 p.m.

Approved this ____ day of August, 2024.

Rebecca A. Gaines
City Clerk.

ORDINANCE NO. 668-2024

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO MEDIACOM SOUTHEAST, LLC, FOR THE PURPOSE OF MAINTAINING DISTRIBUTION LINES FOR THE PROVISION OF CABLE TELEVISION WITHIN THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF SPANISH FORT, ALABAMA

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

SECTION 1. The City Council of the City of Spanish Fort does hereby grant to Mediacom Southeast, LLC, a Delaware limited liability company, a non-exclusive franchise granting the authority to construct and maintain a distribution lines for the provision of cable television in the City of Spanish Fort, subject to the terms and conditions set forth in the following agreement:

FRANCHISE AGREEMENT

This Franchise Agreement (“Franchise”) is between the City of Spanish Fort, AL, hereinafter referred to as “the Franchising Authority” and Mediacom Southeast LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware, hereinafter referred to as “the Grantee.”

The Franchising Authority hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

SECTION 1 Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. “Basic Cable Service” is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- B. “Cable Act” means Title VI of the Cable Act of 1934, as amended.
- C. “Cable Services” shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- D. “Cable System” shall mean the Grantee’s facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.
- E. “FCC” means Federal Communications Commission, or successor governmental entity thereto.
- F. “Franchising Authority” means the City of Spanish Fort, AL.
- G. “Grantee” means Mediacom Southeast LLC, or the lawful successor, transferee, or assignee thereof.

- H. “Gross Revenues” means revenues derived from Basic Cable Services received by Grantee from Subscribers in the Service Area; provided, however, that Gross Revenues shall not include franchise fees, the FCC User Fee or any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency.
- I. “Quarter” means every third month of the calendar year.
- Example: Quarter 1= January through March
 Quarter 2= April through June
 Quarter 3= July through September
 Quarter 4= October through December
- J. “Open Video Services or OVS” means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.
- K. “Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- L. “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.
- M. “Service Area” means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.
- N. “Standard Installation” is defined as 125 feet from the nearest tap to the Subscriber’s terminal.
- O. “Subscriber” means a Person who lawfully receives Cable Service of the Cable System with the Grantee’s express permission.

SECTION 2 **Grant of Franchise**

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services, data services, information and other communications services or for any other lawful purposes.

2.2 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control.

2.3 Other Authorizations. The Franchising Authority shall not permit any person to provide services similar to those provided by the Grantee in the Service Area without first having secured a non-exclusive franchise from the Franchising Authority. The Franchising Authority agrees that any grant of additional franchises or other authorizations including OVS authorizations by the Franchising Authority to provide services similar to those provided by the Grantee pursuant to this Agreement to any other entity shall cover the entire Service Area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein. In any renewal of this Franchise, the Franchising Authority, should it seek to impose increased obligations upon the Grantee, must take into account any additional franchise(s) or authorizations previously granted and find that the proposed increased obligations in the renewal, are not

more burdensome and/or less favorable than those contained in any such additional franchise(s) or authorizations.

SECTION 3 **Standards of Service**

3.1 Conditions of Occupancy. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 Restoration of Public Ways. If, during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 Relocation. The Grantee shall, on the request of the Franchise Authority or any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Franchise Authority or Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.4 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System.

3.5 Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code.

3.6 Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this subsection shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

3.7 Access to Open Trenches. The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.

3.8 Required Extensions of the Cable System. Grantee agrees to provide Cable Service to all residences in the Service Area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in an unserved area contiguous to Grantee's existing distribution facilities where there are at least 10 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

3.9 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 3.9 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rata* basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers

be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

3.10 Cable Service to Public Buildings. The Grantee, upon request, may voluntarily provide without charge, a Standard Installation and one outlet of Basic Cable Service to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any inappropriate use of the Grantee's Cable System or any loss or damage to Grantee's Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable Service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith. To the extent Grantee ceases this voluntary program to provide service to public buildings at no charge, Grantee shall provide the Franchising Authority with at least one hundred twenty (120) days advance written notice of its intent to cease the program. Such notice shall include the rate Grantee proposes to charge for the service, and during the one hundred and twenty (120) day period, the Franchising Authority shall inform Grantee whether it intends to continue receiving service and pay the rate identified, or whether it will opt to cease receiving such service.

3.11 Emergency Alert. Any Emergency Alert System ("EAS") provided by Grantee shall be operated in accordance with FCC regulations. Any use of such EAS by the Franchising Authority will be only in accordance with the applicable state and local plans as approved in accordance with such FCC regulations. Except to the extent expressly prohibited by law, the Franchising Authority will hold the Grantee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including but not limited to reasonable attorneys' fees and costs.

3.12 Reimbursement of Costs. If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.

SECTION 4 **Regulation by the Franchising Authority**

4.1 Franchise Fee.

A. The Grantee shall pay to the Franchising Authority a franchise fee of three percent (3%) of annual Gross Revenues (as defined in subsection 1.1 of this Franchise). In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. Grantee's responsibility for payment of Franchise Fee under this Agreement shall commence on the first day of the next Quarter after final execution of this Agreement. Until that time, Grantee shall continue to pay the Franchise Fee under any pre-existing Franchise Agreement with the Local Franchising Authority. The franchise fee payment shall be due annually and payable within 90 days after the close of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

B. **Limitation on Franchise Fee Actions.** The period of limitation for recovery by the Franchising Authority of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due to the Franchising Authority.

4.2 Renewal of Franchise.

The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the renewal provisions of federal law.

4.3 Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another

party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

445 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without prior written notice to the Franchising Authority. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness.

SECTION 5 **Books and Records**

The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee and no more than once annually may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

SECTION 6 **Insurance and Indemnification**

6.1 Insurance Requirements. The Grantee shall maintain insurance in full force and effect, at its own cost and expense, during the term of the Franchise. The Franchising Authority shall be designated as an additional insured and such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System in the Service Area provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

SECTION 7 **Enforcement and Termination of Franchise**

7.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with any material term of the Franchise, the Franchising Authority shall informally discuss the

matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of such alleged noncompliance.

7.2 The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the Franchising Authority, contesting the assertion of such noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of such default, it cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing. In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

7.4 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 7.3, determines that the Grantee is in material default of any provision of the Franchise, the Franchising Authority may:

A. Commence an action at law for monetary damages or seek other equitable relief; or

B. In the case of repeated or ongoing substantial non-compliance with a material term or terms of the Franchise, seek to revoke the Franchise in accordance with subsection 7.5.

7.5 Revocation. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the repeated or ongoing substantial noncompliance with a material term or terms of the franchise. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Franchising Authority, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing.

Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked, the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the Franchising Authority to an appropriate court which shall have the power to review the decision of the Franchising Authority *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

SECTION 8
Miscellaneous Provisions

8.1 Actions of Parties. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.2 Entire Agreement. This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise shall be mutually agreed to in writing by the parties.

8.3 Reservation of Rights. Acceptance of the terms and conditions of this franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The Franchising Authority acknowledges that Grantee reserves all of its rights under applicable Federal and State Constitutions and laws.

8.4 Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, c) within five (5) business days after having been posted in the regular mail or d) or the next business day if sent by express mail or overnight air courier.

The notices or responses to the Franchising Authority shall be addressed as follows:

Spanish Fort, AL
P.O. Box 226
Spanish Fort, AL 36527

The notices or responses to the Grantee shall be addressed as follows:

Mediacom Southeast LLC
Attn: Legal Department
1 Mediacom Way
Mediacom Park, NY 10918

With a copy to:

Mediacom Southeast LLC
Government Relations Manager
1613 Nantahala Beach Blvd
Gulf Breeze, FL 32563

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

8.5 Descriptive Headings. The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.6 Severability. If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

8.7 Term and Effective Date. The Effective Date of this Franchise is _____. The parties agree that, during the time between final execution of this Franchise and the Effective Date, the terms and conditions of the previous franchise agreement will govern. This Franchise shall be for a term of fifteen (15) years from such Effective Date and shall expire on _____.

Considered and approved this _____ day of _____, 2024.

The City of Spanish Fort, AL

Mediacom Southeast LLC

Printed Name _____

Printed Name _____

Title _____

Title _____

Date _____

Date _____

SECTION 2. Severability Clause. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 3. Repealer Clause. Any Ordinance heretofore adopted by the City Council of the City of Spanish Fort, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 4. Effective Date. This Ordinance shall become effective only upon receipt of a written unconditional acceptance by the Franchisee of the terms and conditions contained herein within thirty (30) days of the passage of this Ordinance.

ADOPTED AND APPROVED this _____ *day of* _____, **2024.**

CITY OF SPANISH FORT, ALABAMA

BY: _____
Michael M. McMillan
Mayor

ATTEST:

Rebecca A. Gaines, CMC
City Clerk

ORDINANCE NO. 673-2024

**AN ORDINANCE AMENDING ORDINANCE NO. 51-96 OF THE CITY OF SPANISH FORT
CHANGING THE ZONING CLASSIFICATION OF CERTAIN PROPERTY LOCATED AT
30810 STATE HIGHWAY 181 FROM R-1 TO B-3**

WHEREAS, the owner of the property made the subject of this change in zoning classification has requested that the zoning classification on the property be changed from R-1 to B-3; and

WHEREAS, the Planning Commission of the City of Spanish Fort, Alabama, held a meeting on Monday, July 8, 2024, for the purpose of receiving public comments on the proposed change in zoning classification, and at such meeting voted to forward a positive recommendation for rezoning the subject property from R-1 to B-3, General Business District; and

WHEREAS, the City Council of the City of Spanish Fort held a meeting on Monday, August 5, 2024, for the purpose of receiving public comments on the proposed change in zoning classification.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:**

SECTION 1. Change in Zoning Classification.

Ordinance No. 51-96, as amended, of the City of Spanish Fort, Alabama, is hereby amended by changing the zoning classification of certain property located at 30810 State Highway 181, and being more particularly described in Exhibit 1 which is attached hereto and made a part of this Ordinance as though set forth fully herein, from R-1, Single Family Low Density Residential District, to B-3, General Business District. A map of the surrounding area is attached as Exhibit 2.

SECTION 2. Change in Zoning Map.

The official zoning map for the City of Spanish Fort is hereby amended, changed or altered to reflect the change in zoning classification from R-1, Single Family Low Density Residential District, to B-3, General Business District, on the above referenced property.

SECTION 3. Repealer Clause.

Any ordinance heretofore adopted by the City Council of the City of Spanish Fort, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict. Except as expressly amended herein, all terms and provisions contained in Ordinance No. 51-96, as amended, shall remain in full force and effect.

SECTION 4. Severability Clause.

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 5. Effective Date.

This Ordinance shall become effective upon its adoption or as otherwise required by state law.

ADOPTED and APPROVED this ___ day of _____, 2024.

Michael M. McMillan
Mayor

ATTEST:

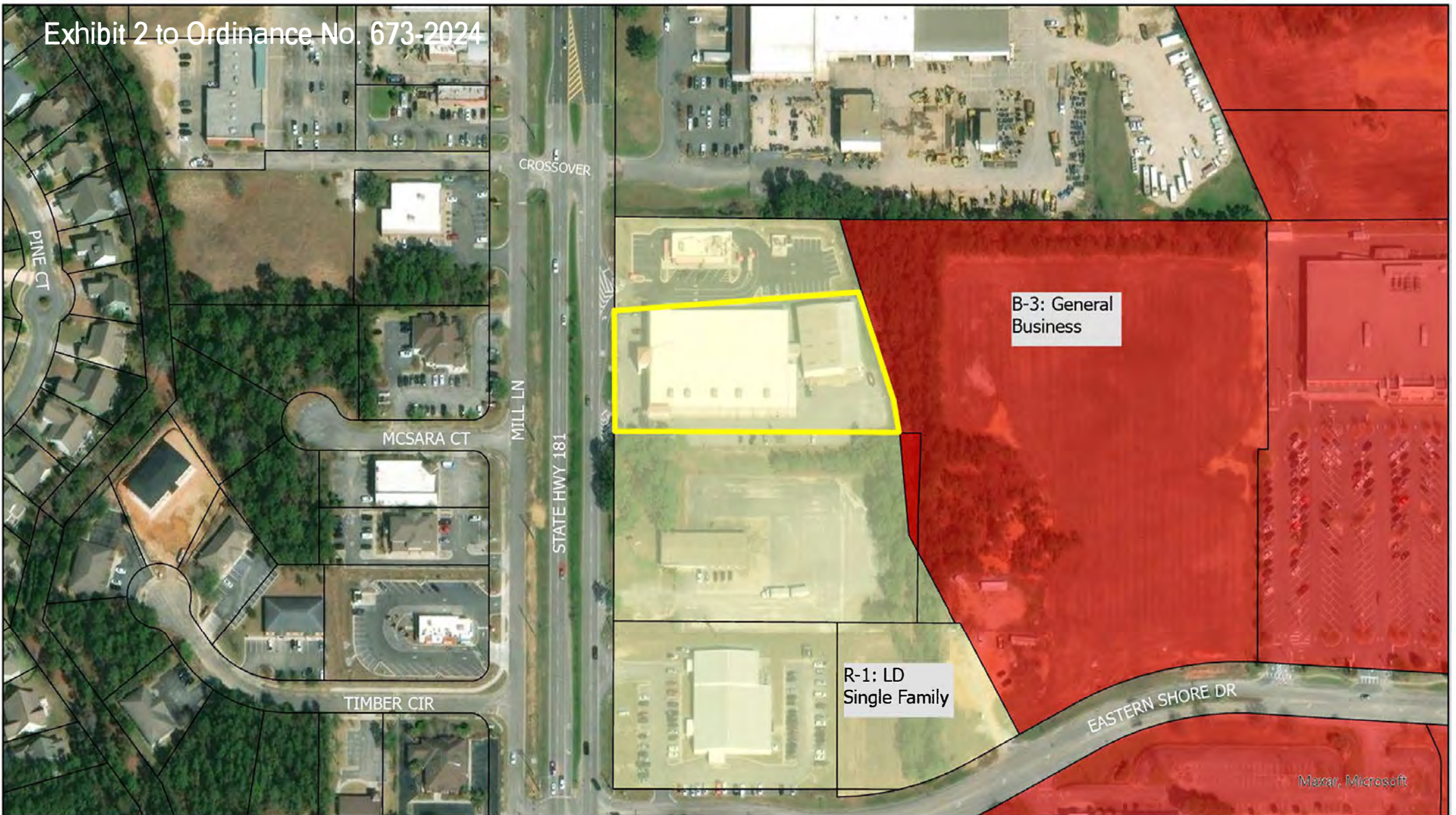
Rebecca A. Gaines
City Clerk

EXHIBIT "1" TO ORDINANCE NO. 673-2024

LEGAL DESCRIPTION:




















LOT 2 W. AND R. SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED ON SLIDE 2566-F AND RATIFICATION THEREOF, RECORDED AS INSTRUMENT NUMBER 1656754, OF THE RECORDS IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA.

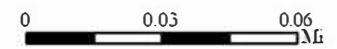
Exhibit 2 to Ordinance No. 673-2024



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ZONING CLASSIFICATION

| | | | | |
|--|---|--|---|---|
|  B-1: Professional Business |  B-3: General Business |  State of Alabama |  R-2: Medium-Density Single-Family Residential |  R-4: Manufactured/Mobile Home Residential |
|  B-2: Local Business |  B-4: Major Business District |  Baldwin County |  R-3: Multi-Family Residential |  <all other values> |
| |  B-5: Hotel/Motel |  City of Spanish Fort |  R-3D: Medium Density Multi-Family Residential |  Parcels |
| |  M-1: Light Industrial |  PUD: Planned Unit Development | |  RoadCenterlines_08172 |
| |  T-1: Telecommunication Tower District |  R-1: Low-Density Single-Family Residential | | |



ORDINANCE NO. 674-2024

AN ORDINANCE ANNEXING CERTAIN PROPERTY INTO THE CORPORATE LIMITS OF THE CITY OF SPANISH FORT, ALABAMA

WHEREAS, on the 19th day of June, 2024, David Kirby, being the owner of the parcel of real property hereinafter described, filed with the City Clerk of the City of Spanish Fort a petition requesting that said property be annexed into the corporate limits of the City of Spanish Fort; and

WHEREAS, said petition contained a description of the subject property, the signature of the owner of the subject property and a map of the subject property showing its relationship to the corporate limits of the City of Spanish Fort; and

WHEREAS, the City Council has determined that said property is contiguous to the corporate limits of the City of Spanish Fort and does not lie within the corporate limits of any other municipality; and

WHEREAS, the City Council of the City of Spanish Fort has determined that it is in the best interest of the City that the property described in Section 1 hereof be annexed into the corporate limits of the City of Spanish Fort, and that all of the requirements of Ala. Code §11-42-20 through §11-42-24 (1975), as amended, have been met.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

SECTION 1. Consent to Annexation.

The City Council of the City of Spanish Fort, Alabama, hereby assents to the annexation of the property described below into the corporate limits of the City of Spanish Fort. The boundary lines and corporate limits of the City of Spanish Fort are hereby altered, extended and rearranged so as to embrace and include the additional property as described in Exhibit A and as depicted in Exhibit B of the petition filed by the owner of the property which is attached hereto as Exhibit 1 and incorporated by reference as though set forth fully herein.

SECTION 2. Filing in Probate Court.

The City Clerk of the City of Spanish Fort is hereby directed to file a copy of this Ordinance, which includes a description of the subject property, in the Office of the Judge of Probate of Baldwin County, Alabama, as required by Ala. Code §11-42-21 (1975), as amended.

SECTION 3. Repealer Clause.

Any ordinance heretofore adopted by the City Council of the City of Spanish Fort, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 4. Severability Clause.

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 5. Effective Date.

This Ordinance shall become effective immediately upon its adoption or as otherwise required by state law.

ADOPTED AND APPROVED this _____ *day of* _____, 2024.

Michael M. McMillan
Mayor

ATTEST:

Rebecca A. Gaines, CMC
City Clerk

Exhibit 1

PETITION FOR ANNEXATION OF CERTAIN PROPERTY INTO THE CORPORATE LIMITS OF THE CITY OF SPANISH FORT, ALABAMA

TO THE CITY OF SPANISH FORT, ALABAMA:

I, the undersigned, David Kirby (the Petitioner), constituting the owner of the hereinafter described property, does hereby file with the City Clerk of the City of Spanish Fort, Alabama, this written petition asking and requesting that the property hereinafter described be annexed into the City of Spanish Fort in accordance with Ala. Code §11-42-20 through §11-42-24 (1975), as amended. As grounds for said petition, the undersigned Petitioner submits and shows the following:

1. The property made the subject of this petition and request for annexation to the City of Spanish Fort is described in Exhibit A which is attached hereto and incorporated by reference as though set forth fully herein.

2. A map of the property described in Exhibit A showing its relationship to the corporate limits of the City of Spanish Fort is attached hereto as Exhibit B and incorporated by reference as though set forth fully herein.

3. The undersigned Petitioner hereby certify that he (she, he, it) is the sole owner of the property made the subject of this petition and request for annexation.

4. The undersigned Petitioner hereby represent and certify that the property described in Exhibit A is contiguous to the corporate limits of the City of Spanish Fort and said property does not lie within the corporate limits of any other municipality. In addition, the undersigned Petitioner represents and certifies that all of the property described in Exhibit A does not lie within the police jurisdiction of any other municipality, and in the event any portion of said property does lie within the police jurisdiction of another municipality, the Petitioner hereby represents and certifies that all of the subject property is located closer to the corporate limits of the City of Spanish Fort than to any other municipality and satisfies the requirements for annexation as set forth in Ala. Code §11-42-21 (1975), as amended.

The Petitioner does hereby request that the City Council of the City of Spanish Fort adopt an ordinance assenting to the annexation of the above-described property into the corporate limits of the City of Spanish Fort.

IN WITNESS WHEREOF, the undersigned Petitioner has hereunto set his hand and seal on this the 19th day of June, 2024.

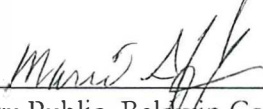
David Kirby
Petitioner

STATE OF ALABAMA
COUNTY OF BALDWIN

I, Marie Stringfellow, a Notary Public, in and for said County in said

State, hereby certify that David Kirby, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the date the same bears date.

Given under my hand and seal this 19 day of JUNE, 2024.



Notary Public, Baldwin County, Alabama
My Commission Expires _____

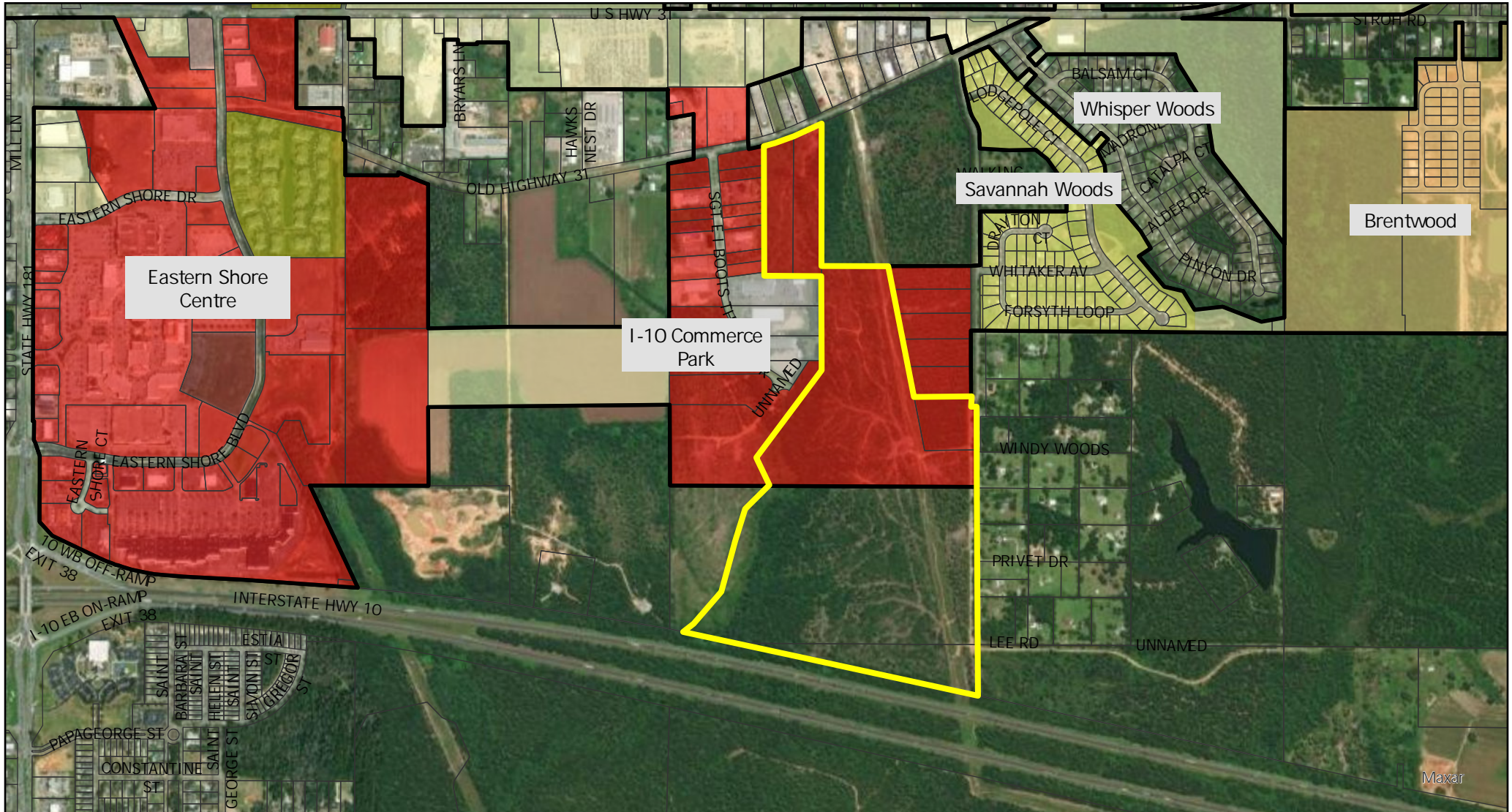


EXHIBIT "A" TO PETITION FOR ANNEXATION

Lot 2 and 3 and 9, I-10 Commerce Center Phase 2 according to the plat thereof recorded on Slide No. 2392-A and 2392-B, of the records in the Office of the Judge of Probate, Baldwin County, Alabama.

Lot 2 of the Resubdivision of I-10 Commerce Center, Phase 2 according to the Plat thereof recorded on Slide No. 2947-F (Document No. 2024-2124792), of the records in the Office of the Judge of Probate, Baldwin County, Alabama.

Exhibit B to Petition for Annexation



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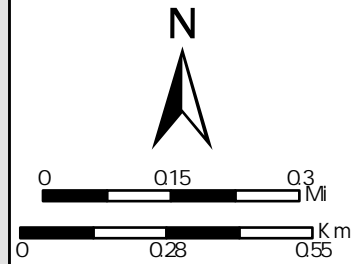
-
- B-1: Professional Business
- B-2: Local Business

- B-3: General Business
- B-4: Major Business District
- Baldwin County
- City of Spanish Fort
- M-1: Light Industrial

- PUD: Planned Unit Development
- R-1: Low-Density Single-Family Residential
- R-2: Medium-Density Single-Family Residential

- R-3: Multi-Family Residential
- R-3D: Medium Density Multi-Family Residential
- R-4: Manufactured/Mobile Home Residential
- State of Alabama

- T-1: Telecommunication Tower District
- B-5: Hotel/Motel
- < all other values >
- SF_City_Limits_0124



ORDINANCE NO. 674-2024

AN ORDINANCE REGULATING THE KEEPING OF ANIMALS WITHIN THE CORPORATE LIMITS OF THE CITY OF SPANISH FORT, ALABAMA

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

SECTION 1. Office of Animal Control Officer Created.

(a) There is hereby created within the City of Spanish Fort, Alabama, the position of Animal Control Officer. The Animal Control Officer shall be appointed by the City Council of the City of Spanish Fort, and the Chief of Police or any member of the Spanish Fort Police Department may be appointed as Animal Control Officer, in addition to their other duties. The Animal Control Officer shall supervise the enforcement of this Ordinance, and any additional enforcement officers appointed by the City Council shall hereafter be known as Animal Control Officers. Any officer of the Spanish Fort Police Department shall have authority to enforce the provisions of this Ordinance.

shall hereafter be known as Animal Control Officers. Any officer of the Spanish Fort Police Department shall have authority to enforce the provisions of this Ordinance.

all hereafter be known as Animal Control Officers. Any officer of the Spanish Fort Police Department shall have authority to enforce the provisions of this Ordinance.

(b) It shall be unlawful for any person to knowingly and willfully oppose or resist the Animal Control Officer or any other enforcement officers in executing or attempting to execute any lawful process or in the discharge of any regular duty, or in any way to interfere with, hinder or prevent any such officer from discharging his or her duty.

SECTION 2. Definitions.

For the purpose of this Ordinance, the following words and phrases shall have the meaning respectively ascribed to them by this Section:

(a) CITY OF SPANISH FORT ANIMAL HOLDING FACILITY OR CITY ANIMAL HOLDING FACILITY/SHELTER. The place designated or used by the City of Spanish Fort for the place of confinement of animals held under the authority of this Ordinance, which may include, but is not limited to, any county animal shelter, any animal shelter maintained by another municipality or any privately operated animal shelter or approved rescue organization or veterinarian clinic.

(b) ANIMAL CONTROL OFFICER. All enforcement officers assigned by the City of Spanish Fort to enforce this Ordinance.

(c) AT LARGE. Any animal, other than a domestic house cat, shall be “at large” when it is off the property of its owner or person in charge of such animal and not carried by said person, kept in an effective enclosure or controlled by such person by means of a leash in such a way as to prevent its free movement, and so as to prevent said animal from freely charging or attacking a person or animal. Provided, however, that a dog which is not vicious, or presumed to be vicious, and which is obedient either by training or temperament shall not be considered “at large” while upon a public street or other public place and in the immediate presence and under voice control of its owner or a competent handler, and provided further, that a dog which is not vicious or presumed to be vicious shall not be considered “at large” while upon the premises of its owner or a person in charge of the animal. A dog which is off the premises of its owner or a person in charge of the animal and more than 30 feet from the actual location of its handler shall not be considered in the immediate presence of and under voice control of said handler.

on of its handler shall not be considered in the immediate presence of and under voice control of said handler.

s handler shall not be considered in the immediate presence of and under voice control of said handler.

(d) BITTEN. Shall mean seized with the teeth or jaws, such that the skin of the person or thing seized has been nipped or gripped or has been wounded or pierced and there has been probable contact of saliva with the break or abrasion of the skin as determined by a licensed physician.

(e) DOG. Shall mean and include all members of the domestic canine family.

(f) DOMESTICATED ANIMALS. Any such animals that are accustomed to live in or about the habitation of humans, including, but not limited to, cows, fowl, horses, sheep, goats, swine, livestock or any other animal kept as a pet or otherwise.

(g) CAT. Shall mean a domestic house cat.

(h) STRAY ANIMAL. Any animal running at large, the owner or person in charge of which is unknown.

(i) WILD ANIMAL. Any animal of a species that in their natural life or habitat are wild, dangerous or ferocious and, though they may be trained and domesticated by the owner, will remain dangerous to the public at large.

SECTION 3. Collar and Tag Requirement.

Every dog over three months of age kept within the corporate limits of the City of Spanish Fort shall at all times wear a collar to which shall be attached an identification tag identifying the owner's name, address and telephone number where the owner may be contacted.

SECTION 4. Seizure of Dogs Running at Large.

(a) It shall be unlawful for the owner or any other person having charge or control of a dog to allow it to be or run at large within the City. It shall be the duty of the Animal Control Officer when so notified, or whenever the Animal Control Officer observes any dog running at large, to immediately cause such dog to be seized and confined in the City Animal Holding Facility and to make a reasonable effort to notify the owner if the dog has a tag identifying the name, address and telephone number of the owner. Any dog found unlawfully to be at large within the City is hereby declared a nuisance and shall be seized and confined by the Animal Control Officer and cared for in a humane manner for a period of not less than seven (7) days.

(b) In addition to, or in lieu of, confining a dog found unlawfully at large when the owner or person in charge of said dog is known to the Animal Control Officer, the Animal Control Officer may return the dog to the owner or person in charge and issue a citation for violation of this Ordinance.

(c) Immediately upon confinement of dogs, the Animal Control Officer shall make reasonable effort to ascertain the identity of and notify the owner or person in charge of such dogs of their confinement and of the conditions under which they may regain possession of such animal.

SECTION 5. Keeping of Vicious Dogs.

(a) VICIOUS OR DANGEROUS DOG DEFINED. Any dog which bites, scratches, fiercely attacks or attempts to bite, scratch or fiercely attack any person or other animal, or which chases or runs after any person or vehicle in which or on which a person is riding, shall be deemed to be vicious or dangerous.

(b) CONFINEMENT REQUIRED. It shall be unlawful for the owner or other person in charge thereof to keep a vicious dog in the City, unless such dog is securely confined, bound or adequately leashed in such a manner as to prevent such dog from biting or attacking a person or other animal.

(c) ENCLOSURES FOR VICIOUS DOGS-POSTING OF PREMISES. Whenever a vicious dog is permitted to run at large within a wall, fence or other enclosure, it shall be the duty of the owner or person in charge of such dog to give public notice or warning that such dog is at large within such enclosure by conspicuously posting a written or printed notice at every unlocked entrance to such enclosure.

(d) AUTHORITY OF ANIMAL CONTROL OFFICER WHEN ENCLOSURE DEEMED INADEQUATE. Whenever a vicious dog is not properly and securely confined, the Animal Control Officer may order confinement of the dog until the owner or other person in charge of such dog provides an enclosure which, in the opinion of the Animal Control Officer, is adequate. Until

an enclosure is provided which the Animal Control Officer deems adequate, the Animal Control Officer may order confinement of such dog with such person or organization as the Animal Control Officer shall determine. The cost of feeding and caring for the dog shall be paid by the owner. If the owner of such dog fails to provide an enclosure which the Animal Control Officer deems to be adequate within thirty days, such dog may be disposed of by extermination or as otherwise directed by the Animal Control Officer.

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(e) REPORTING OF VICIOUS DOGS BY SWORN STATEMENT, PROCEDURE UPON FIRST INDICATION OF VICIOUSNESS. When any person claims that a dog is vicious, he or she shall make a sworn statement before an officer authorized to administer oaths in the City, and the sworn statement shall set forth the reasons for believing the dog to be vicious. The sworn statement shall be delivered to the Animal Control Officer. Upon receipt of such sworn statement, the Animal Control Officer shall immediately make an investigation. If, in the Animal Control Officer's opinion, the dog is vicious, and if he or she further finds that the incident reported is the first incident or indication of viciousness on the part of the dog, the Animal Control Officer shall order such dog confined. If the owner of the dog does not immediately provide a proper enclosure, the Animal Control Officer shall confine such dog with such person or organization as the Animal Control Officer shall determine for a period not exceeding thirty days. If the owner or person in charge of the dog does not provide an enclosure within thirty days which meets the approval of the Animal Control Officer and pay the expense of confinement, the dog may be disposed of by extermination or as otherwise directed by the Animal Control Officer.

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(f) PROCEDURE UPON PRIOR INDICATION OF VICIOUSNESS BUT NO PRIOR ACTION TAKEN BY THE ANIMAL CONTROL OFFICER. If upon receipt of the sworn statement provided in the preceding section the Animal Control Officer determines that the dog is vicious, and if he or she further finds that the dog has on previous occasions given evidence of its viciousness, but that no prior order has been made by him or her in reference to such dog, the Animal Control Officer may, in his or her judgment, either order the dog confined as provided in the preceding section, or he or she may file a judicial proceeding before the municipal court or the court authorized to hear municipal cases to determine whether or not such dog should be exterminated.

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(g) PROCEDURE WHEN THERE HAS BEEN PRIOR INDICATION OF VICIOUSNESS AND ANIMAL CONTROL OFFICER HAS ACTED. If upon receipt of the sworn statement provided in Section 5, the Animal Control Officer shall find such dog to be vicious, and if he or she further finds that he or she had, prior to the time of the receipt of such sworn statement, ordered the dog to be confined, the Animal Control Officer shall order such dog confined for three days, and at the end of such time shall have the dog exterminated, unless the owner appeals to the municipal court or the court authorized to hear municipal cases, in which case the matter shall be determined by the judge.

(h) APPEAL OF FINDING OF VICIOUSNESS BY ANIMAL CONTROL OFFICER. In the event the Animal Control Officer determines that a dog is vicious or dangerous and orders the dog to be confined, the owner or other person in charge of such dog may appeal the finding and order to the municipal court or the court authorized to hear municipal cases by filing a notice of appeal with the Court Clerk and the City Clerk within 5 days of the date of the order. The owner shall be responsible for all costs of the appeal and expenses of confinement during the pendency of the appeal or otherwise.

(i) REMEDIES OF DIVISION TO BE CUMULATIVE. The remedies provided in this division are cumulative and shall in no way affect any other remedies provided by law and shall be in addition to the criminal prosecution of the owner or keeper of any vicious dog.

SECTION 6. Animals Running at Large-Prohibited.

It shall be unlawful for the owner or any other person having charge or control of any animal other than a dog or cat, including, but not limited to, livestock, domesticated animals or any other animal kept by said person, to allow said animal to be or run at large within the City.

SECTION 7. Noisy Animals.

(a) It shall be unlawful and a nuisance for any person to keep on a residential lot or premises any animal or group of animals, known to said person to habitually, continuously, or intermittently to make or emit sound or noises of such volume and nature as to unreasonably interfere with or disturb the peace, quiet, comfort and repose of persons of ordinary sensibilities within the neighborhood in the reasonable use and enjoyment of adjacent property.

(b) It shall be unlawful and a nuisance for any person to keep on any tract, lot or premises within the City any animal or group of animals whether the same is housed in a corral, kennel, building or other structure(s) under such circumstances that the sounds or noises emitted by said animals are of such volume and nature as unreasonably to interfere with or disturb the peace, quiet, comfort and repose of persons of ordinary sensibilities in the reasonable use and enjoyment of any adjacent property used for residential purposes.

r residential purposes.

residential purposes.

(c) Any owner or person in charge violating this Section shall be guilty of maintaining a nuisance. Provided, however, that no prosecution shall be commenced and no arrest made pursuant to this Section, except upon affidavit made before and warrant issued by a Magistrate.

SECTION 8. Right of Entry.

The Animal Control Officer of the City of Spanish Fort shall have the right to enter upon any property, except a private dwelling house, for the purpose of capturing any animal in violation of the provisions of this Ordinance subject to state law.

SECTION 9. Procedure for Redemption.

The owner of any animal may, within seven (7) days after the animal is impounded, redeem the animal by paying to the City of Spanish Fort the sum of twenty-five (\$25.00) dollars for the impounding and the actual cost incurred by the City of Spanish Fort, but not less than ten (\$10.00) dollars per day, for the keep of said animal, plus any other fees charged by the shelter. In the case of a dog or cat, evidence must be presented that said dog or cat has been inoculated against rabies prior to release.

SECTION 10. Disposition of Unredeemed Dogs or Cats.

(a) In the event any impounded animal is not redeemed within seven (7) days after the same is impounded, the Animal Control Officer may, at such Officer's discretion, place said animal in a home or adopt the animal out to a third party for expenses incurred, turn said animal over to the Humane Society or other rescue organization approved by the Mayor for adoption or destroy said animal in a humane manner.

(b) After a dog or cat has been confined for the period of time as provided in this Section, and if the owner or person entitled to possession fails to make application for the release of such animal as herein provided, or fails to pay the charges as provided this Ordinance, or fails to pay for the proper inoculation for rabies, or if such satisfactory evidence as required by this Ordinance is not provided, then such animal is hereby declared a nuisance and a danger to the health, safety and welfare of the City, and the Animal Control Officer may cause such animal to be humanely destroyed as herein provided. However, any dog or cat under two (2) weeks old or whose eyes have not opened since birth may be humanely disposed of immediately upon being impounded where it has been found in violation of the Animal Control Ordinance.

(c) Any Animal Control Officer authorized by the Chief of Police to carry a firearm assisting in impounding any animal shall have the authority to shoot and kill such animal, if in attempting to capture the same or in otherwise keeping the same, it shall become an immediate hazard to his or her safety or the safety of persons or animals in the immediate vicinity.

(d) Any confined animal that is injured or diseased will, as an act of mercy, be humanely destroyed immediately if it is determined by the Animal Control Officer or a veterinarian that such destruction is necessary to prevent unnecessary suffering, to prevent the spread of disease or because the animal is incurable. A written finding to this effect shall be signed by those inspecting the animal and such written document shall be retained by the City for a period of one (1) year.

(e) The Animal Control Officer when required to dispose of animals shall do so by such process as is recognized by veterinary science as being a humane manner in which to destroy animals.

(f) Wild or non-domesticated animals, when circumstances demand, may be destroyed by the Animal Control Officer or at his or her direction for public safety, to prevent the spread of disease and as an act of mercy. Such authority shall come from the Chief of Police for animal control personnel to carry out the provisions of this Section.

SECTION 11. Rabies Vaccination Required - Penalty.

(a) It shall be unlawful for any owner or person in charge to keep any dog or cat more than three (3) months of age within the City which has not been vaccinated against rabies within the preceding twelve (12) months.

(b) Any owner or person in charge in violation thereof shall be subject to a penalty not to exceed an amount equal to twice the State-approved charge for inoculation, to be imposed by the Animal Control Officer or his authorized representative, in addition to the fee prescribed for the inoculation.

(c) In order to be sufficient under this Ordinance, the vaccination of a dog or cat shall be accomplished by a licensed veterinarian.

(d) The serially numbered rabies tag at the time of inoculation shall at all times be attached to a collar or harness worn by the dog for which the tag is issued. However, said tag need not be attached during supervised obedience training classes or animal shows.

SECTION 12. Confinement of Dogs or Cats in Heat.

Every female dog or cat in heat shall be kept confined by the owner or person in charge. At any time that a female dog or cat in heat is found to be causing a disturbance of cats and dogs on adjoining premises, it shall be the duty of the owner or person in charge of said dog or cat to immediately confine said dog or cat in a manner so as to avoid such disturbance.

SECTION 13. Duty to Restrain or Control.

(a) Dogs - It shall be the duty of every owner or person in charge of a dog to keep said animal under effective restraint or control inside the City limits, whether or not said dog is upon or away from his or her premises. It shall be unlawful for the owner or person in charge of any dog to fail to keep said animal under effective restraint or control. Proof that a dog was not properly restrained or controlled while off the premises of the owner or person in charge shall be prima facie evidence of a violation. Negligent failure to provide or maintain effective control or restraint shall not be a defense; however, competent evidence that said failure was occasioned by an unforeseeable and independent act of a third person shall shift the burden on the City to prove otherwise.

ation. Negligent failure to provide or maintain effective control or restraint shall not be a defense; however, competent evidence that said failure was occasioned by an unforeseeable and independent act of a third person shall shift the burden on the City to prove otherwise.

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(b) Cats - It shall be unlawful for the owner or any person having custody or control of any cat known to habitually cause destruction or damage to the property of another to allow said cat to run at large within the City. Provided, however, that no prosecution shall be commenced and no arrest made pursuant to paragraph (b) of this Section except upon affidavit made before and warrant issued by a Magistrate.

SECTION 14. Stray Dogs May be Taken Up.

Any person in the City finding any dog running at large about his premises or residence, or the residence of which he or she in charge, may have such animal confined by the Animal Control Officer as an at large animal or stray.

SECTION 15. Humane Traps.

(a) The Animal Control Officer is hereby authorized, in order to apprehend animals in violation of this Ordinance, to use traps designed humanely to capture said animals by placing the same upon any public property of the City, upon the right of way of any public street or highway or upon the private property of any person granting permission therefor.

(b) It shall be the duty of the Animal Control Officer to check such traps daily and remove captured animals therefrom to the City Animal Holding Facility where they shall be disposed of as otherwise provided herein.

(c) It shall be unlawful for any person to molest or tamper with any such trap or to remove any animal captured in any such trap or to interfere with the Animal Control Officer in setting or servicing any such trap.

(d) Any owner or person in charge of any dog captured in a humane trap which is off the premises of the owner or person in charge thereof shall be prima facie presumed to have allowed, suffered or permitted such animal to be or to run at large. At any time a dog is captured by use of such trap, and the owner or person in charge is known or becomes known to the Animal Control Officer, such owner or person in charge shall be given a citation to appear in court.

SECTION 16. Cruelty to Animals.

Any person who (a) overrides, overdrives, overloads, drives when overloaded, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or cruelly kills any animal; and (b) any person who having the charge or custody of such animal, either as owner or otherwise, inflicts unnecessary cruelty upon same, or fails to provide the same with proper food, drink, or protection from the weather, or cruelly drives or rides or allows to be ridden or overdriven when unfit for labor; and (c) any person who having the charge or custody of any animal known to him or her to require medical treatment or care in order to prevent unjustifiable physical pain, suffering, or death, who having such knowledge fails to provide proper treatment and care, or in the alternative, to cause said animal to be humanely disposed of; and (d) any person who unlawfully or maliciously kills, disables, disfigures or injures any animal, without good excuse, shall be guilty of a misdemeanor.

on who having the charge or custody of any animal known to him or her to require medical treatment or care in order to prevent unjustifiable physical pain, suffering, or death, who having such knowledge fails to provide proper treatment and care, or in the alternative, to cause said animal to be humanely disposed of; and (d) any person who unlawfully or maliciously kills, disables, disfigures or injures any animal, without good excuse, shall be guilty of a misdemeanor.

n who having the charge or custody of any animal known to him or her to require medical treatment or care in order to prevent unjustifiable physical pain, suffering, or death, who having such knowledge fails to provide proper treatment and care, or in the alternative, to cause said animal to be humanely disposed of; and (d) any person who unlawfully or maliciously kills, disables, disfigures or injures any animal, without good excuse, shall be guilty of a misdemeanor.

SECTION 17. Duty of Owner to Remove Deposited Feces.

It shall be the duty of the owner or person in charge of any dog or cat which has been allowed by that person to be at large to remove and dispose of any feces deposited by the animal upon

any residential lot of another occupied for human habitation, or upon any right-of-way adjacent thereto, upon demand from the owner or occupant thereof, or upon demand of the Animal Control Officer.

SECTION 18.Owner’s Duty to Remove Scattered Garbage.

It shall be the duty of the owner or person in charge of any dog or cat which has been allowed or suffered by that person to run at large to pick up and remove to a secure authorized container any garbage or refuse which the animal has caused to be overturned, spilled or scattered upon any residential lot occupied for human habitation, or upon any right-of-way adjacent thereto, upon demand from the owner or occupant thereof, or upon demand of the Animal Control Officer, and it shall be unlawful for any such person to fail or refuse to do so; provided, however, that no prosecution shall be commenced and no arrest made pursuant to this section except upon affidavit made before and warrant issued by a Magistrate.

h person to fail or refuse to do so; provided, however, that no prosecution shall be commenced and no arrest made pursuant to this section except upon affidavit made before and warrant issued by a Magistrate.

person to fail or refuse to do so; provided, however, that no prosecution shall be commenced and no arrest made pursuant to this section except upon affidavit made before and warrant issued by a Magistrate.

SECTION 19.Citations.

When any animal is found by the Animal Control Officer to be in violation of any provision of this Ordinance, and the person or persons responsible become known to the Animal Control Officer, he may issue a citation to the owner or person in charge for said violation directing him to appear in court at a time and date stated therein to answer to charges of violations of this Ordinance, which said charges shall be stated in said citation.

SECTION 20. Disposition of Fees.

All monies collected as provided for in this Ordinance shall be turned over and delivered forthwith to the City Clerk.

SECTION 21.Minimum Penalties.

Any person violating any provision of this Ordinance shall be punished by a fine of not less than \$10.00 nor more than \$500.00, and said person shall pay all costs incurred by the City in capturing or confining an animal found to be in violation of this Ordinance. In addition to such other punishment as may be provided by the Court, the following minimum fines and penalties shall apply:

| <u>Description of Offense</u> | <u>1st Offense</u> | <u>2nd Offense</u> | <u>3rd Offense</u> |
|---|--------------------|--------------------|--------------------|
| Allowing a dog to run at large | \$ 15.00 | \$ 25.00 | \$ 50.00 |
| Allowing a dog to be kept without a proper identification tag affixed | \$ 10.00 | \$ 20.00 | \$ 30.00 |
| Not properly confining a female dog or cat in heat | \$ 25.00 | \$ 50.00 | \$100.00 |
| Cruelty to animals Confinement | \$200.00 | \$500.00 | 10days |
| Allowing an animal known or presumed to be vicious to be at large | \$100.00 | \$200.00 | \$500.00 |

SECTION 22. Animals Suspected of Having Rabies Declared Nuisances; Impoundment of Same.

Any animal suspected of infection with rabies is hereby declared to be a public nuisance and a danger to the health and safety of the community. The Animal Control Officer may take up and confine any such animal.

SECTION 23. Severability Clause.

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 24. Repealer Clause.

Ordinance No. 115-2001 is hereby repealed. Any ordinance heretofore adopted by the City Council of the City of Spanish Fort, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 25. Effective Date.

This Ordinance shall become effective upon its adoption.

ADOPTED AND APPROVED this ___ day of _____, 2024.

Michael M. McMillan
Mayor

ATTEST:

Rebecca A. Gaines, CMC
City Clerk

RESOLUTION NO. 1429-2024

A RESOLUTION AWARDING A BID FOR THE SPANISH FORT CENTRAL FIRE STATION

WHEREAS, the Mayor and City Council find that the lowest responsible and responsive bid submitted for the construction of the Spanish Fort Central Fire Station in the City of Spanish Fort was submitted by Waverly Construction of Alabama, LLC; and

WHEREAS, the City Council desires to award the bid for the Spanish Fort Community Central Fire Station to Waverly Construction of Alabama, L.L.C., in accordance with its bid received on June 27, 2024.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA. AS FOLLOWS:

SECTION 1. The City Council awards the bid to Waverly Construction of Alabama, LLC, for the construction of the Spanish Fort Central Fire Station in the City of Spanish Fort in accordance with the bid dated June 25, 2024, with a base bid amount of \$6,485,000.00, subject to the alternates and adjustments set forth below.

SECTION 2. The City Council accepts Alternate No. 1 and Alternate No. 3 and rejects Alternate No. 2 of said bid. Based on the foregoing, the base bid amount of \$6,485,000.00 is hereby adjusted by reducing the base bid amount by and a deduction of \$127,010.00 for Alternate No. 1, and the amount of \$20,248.00 is hereby added to the base bid amount for Alternate No. 3. As a result, the total amount of the bid awarded under this Resolution is \$6,378,418.00. The Mayor is authorized to execute a contract with Waverly Construction of Alabama, L.L.C., subject to any changes deemed necessary by the Mayor.

SECTION 3. If any part, section or subdivision of this Resolution shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Resolution which shall continue in full force and effect notwithstanding such holding.

ADOPTED and APPROVED this _____ day of _____, 2024.

Michael M. McMillan
Mayor

ATTEST:

Rebecca A. Gaines, CMC
City Clerk

Exhibit 1 to Resolution No. 1429-2024



Architectural Planning
Interiors, Construction Administration

P.O. Box 529
Robertsdale, AL 36567

251.947.3864
adamsstewart.com

June 27, 2024

City of Spanish Fort
c/o Mayor McMillan
7361 Spanish Fort Boulevard
Spanish Fort, Alabama 36527

Re: Bid Recommendation
City of Spanish Fort, Central Fire Station

Mayor,

Bid proposals for this project were received on June 27, 2024, at 11:00 am CST. Seven (7) General Contractors presented proposals, and each proposal was opened and read aloud at the specified time and location. Six qualifying bidders did not submit proposals.

Upon review of each proposal, Waverly Construction of Alabama LLC is the lowest responsible and responsive bidder, with a Total Base Bid of **\$6,485,000.00**. I have verified that their GC license is in good standing and that their bid limit is classified as “unlimited.”

Through the competitive bid process, we received alternate pricing for the following Items:

Alternate #1- Deduct from the base bid the Magnegrip truck exhaust containment systems.
DEDUCT AMOUNT: (\$127,010.00)

Alternate #2- Deduct from the base bid (4) Bifold Truck Bay Doors and Transom windows on the west elevation of the apparatus bay. In lieu of Bifold doors, install (4) sectional doors equal to specification provided. DEDUCT AMOUNT: (\$197,727.00)

Alternate #3- Add to the Base Bid, materials and installation of (1) Baby Safe Haven Box. ADDITIVE AMOUNT: \$20,428.00

My recommendations are as follows:

Regarding the Base Bid:

I recommend accepting the base bid and awarding the project to the lowest bidder.

Regarding Alternate 1:

I recommend accepting and modifying the base bid accordingly.

Regarding Alternate 2:

I do not recommend accepting the sectional doors in lieu of bi-fold doors and transom windows. This recommendation is based on appearance and life-cycle maintenance cost. In my opinion the Bi-Fold Doors and Transoms will better serve the city and the Fire Department for the life of this structure.

Regarding Alternate 3:

I do not recommend accepting unless the Council feels strongly for its need in the City of Spanish Fort.

Accepting alternates in any order does not modify who the low bidder would be. As such, they can be accepted at the Mayor and Council's discretion as determined by need, funds available and my recommendations above.

If you have any questions, please contact me.

Respectfully submitted,

A handwritten signature in purple ink, appearing to read "Todd F. Stewart", followed by a horizontal line extending to the right.

Todd F. Stewart, AIA/NCARB
Adams Stewart Architects, LLC

Attachments: Certified Bid Tabulation Sheet

7361 Spanish Fort Blvd.
Spanish Fort, AL 36527

Project:
Spanish Fort Fire Rescue Central Station
7550 Spanish Fort Blvd, Spanish Fort, AL 36527

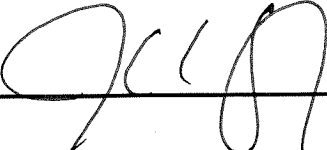
Bid Opening Location: City of Spanish Fort
7361 Spanish Fort Blvd.
Spanish Fort, AL 36527

AS TABULATED BELOW, BIDS WERE RECEIVED:
DATE: June 27, 2024 TIME: 11:00 AM CST

| CONTRACTOR | License No. | Time Bid Received | Bid Surety | Add 1 Rcy'd | Add 2 Rcy'd | Add or Deduct | Base Bid | Adjusted Base Bid | Deductive Alternate 1 | Deductive Alternate 2 | Add Alternate 3 | Total Adj w/ Alt | Remarks |
|-----------------------------------|-------------|-------------------|------------|-------------|-------------|-----------------|-----------------|-------------------|-----------------------|-----------------------|-----------------|------------------|---------|
| Anderson Construction, LLC | 56855 | | | | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Bear General Contractors, LLC | 55393 | 10:50 AM | X | X | X | \$ (71,000.00) | \$ 6,945,000.00 | \$ 6,874,000.00 | \$ (126,742.00) | \$ (198,954.00) | \$ 19,844.00 | \$ 6,568,148.00 | |
| Cooper Construction Inc. | 18707 | | | | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Crucible Construction, LLC | 54542 | 10:55 AM | X | X | X | \$ - | \$ 7,115,482.00 | \$ 7,115,482.00 | \$ (117,168.00) | \$ (215,109.00) | \$ 30,595.00 | \$ 6,813,800.00 | |
| Dyas Construction Management, LLC | 42051 | | | | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Gaillard Builders Inc. | 38668 | 10:53 AM | X | X | X | \$ - | \$ 7,100,000.00 | \$ 7,100,000.00 | \$ (109,845.00) | \$ (100,000.00) | \$ 29,254.50 | \$ 6,919,409.50 | |
| Green-Simmons Co. Inc. | 38125 | 10:48 AM | X | X | X | \$ - | \$ 8,820,000.00 | \$ 8,820,000.00 | \$ (130,000.00) | \$ (240,000.00) | \$ 31,000.00 | \$ 8,481,000.00 | |
| Harris Contracting Services, LLC | 51175 | 10:45 AM | X | X | X | \$ - | \$ 7,400,000.00 | \$ 7,400,000.00 | \$ (117,000.00) | \$ (19,250.00) | \$ 28,000.00 | \$ 7,291,750.00 | |
| MW Rogers, LLC | 21886 | | | | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Persons Services Corp. | 26127 | 10:56 AM | X | X | X | \$ (210,000.00) | \$ 7,060,701.00 | \$ 6,850,701.00 | \$ (117,168.00) | \$ (213,930.00) | \$ 17,250.00 | \$ 6,536,853.00 | |
| Roy Lewis Construction Corp. | 8591 | | | | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Waverly Construction, LLC | 54127 | 10:52 AM | X | X | X | \$ (140,000.00) | \$ 6,625,000.00 | \$ 6,485,000.00 | \$ (127,010.00) | \$ (197,727.00) | \$ 20,428.00 | \$ 6,180,691.00 | |
| Wyatt Sasser Construction, LLC | 48893 | | | | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |


I certify that the above bids were received sealed and were publicly opened and read aloud at the time and place indicated and that this is a true and correct tabulation of all bids received for this project.

Sworn and subscribed before me this 27th day of JUNE 2024



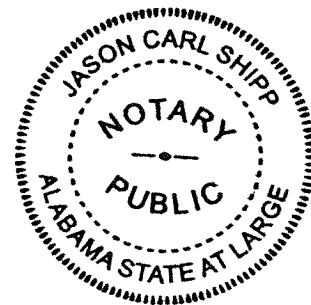
Notary Public

L.S.



Architect of Record

JASON CARL SHIPP
Notary Public, Alabama State At Large
My Commission Expires August 01, 2026



RESOLUTION NO. 1430-2024

A RESOLUTION AWARDING A BID FOR THE SPANISH FORT DOG PARK

WHEREAS, the Mayor and City Council find that the lowest responsible and responsive bid submitted for the Spanish Fort Dog Park in the City of Spanish Fort was submitted by PL Russell, LLC; and

WHEREAS, the City Council desires to award the bid for the Spanish Fort Dog Park Addition to PL Russell, LLC, in accordance with its bid received on July 1, 2024.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

SECTION 1. The City Council awards the bid and contract to PL Russell, LLC, for the Spanish Fort Dog Park in the City of Spanish Fort in accordance with the bid dated July 1, 2024. A copy of the bid recommendation and bid tabulation is attached as Exhibit 1 hereto. A copy of the proposed contract is attached as Exhibit 2, subject to changes approved by the Mayor.

SECTION 2. If any part, section or subdivision of this Resolution shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Resolution which shall continue in full force and effect notwithstanding such holding.

ADOPTED and APPROVED this _____ day of _____, 2024.

Michael M. McMillan
Mayor

ATTEST:

Rebecca A. Gaines, CMC
City Clerk



30673 Sgt E.I. "Boots" Thomas Dr.
Spanish Fort, AL 36527
P: 251-544-7900
www.sawgrassllc.com

July 1, 2024

City of Spanish Fort
7361 Spanish Fort Blvd
Spanish Fort, AL 36527

RE: Recommendation to Award – Huckleberry Lane Dog Park

Dear Honorable Mike McMillan,

Sawgrass Consulting has tabulated and certified the results of the bidder's proposals for the contract for the City of Spanish Fort Huckleberry Lane Dog Park received July 1, 2024. The proposal and qualifications of the lowest responsible bidder are in order; therefore, we recommend that the City of Spanish Fort award the construction contract to PL Russell, LLC (AL License No. 57754) for the bid amount of \$270,921.30.

Please review the attached Bid Tabulation Summary for reference. Please contact me at 251-544-7900, if you have any questions regarding these results.

Sincerely,

A handwritten signature in blue ink, appearing to read 'James H. Robertson', with a long horizontal flourish extending to the right.

James H. Robertson, PE
Vice President

Enclosures



Owner: City of Spanish Fort
 Project: Huckleberry Lane Dog Park

BID TABULATION

| ITEM # | DESCRIPTION | UNIT | QTY | PL Russell | | Tripek Construction | | L & K Construction | |
|--------|--|----------|-------|--------------|--------------|---------------------|--------------|--------------------|--------------|
| | | | | UNIT PRICE | AMOUNT | UNIT PRICE | AMOUNT | UNIT PRICE | AMOUNT |
| 201-A | CLEARING & GRUBBING (1.6 ACRES) | LS | 1 | \$ 38,500.00 | \$ 38,500.00 | \$ 23,554.00 | \$ 23,554.00 | \$ 31,250.00 | \$ 31,250.00 |
| 206-C | SAWCUTT & REMOVE EXIST ASPHALT | SY | 8 | \$ 15.97 | \$ 127.76 | \$ 200.00 | \$ 1,600.00 | \$ 100.00 | \$ 800.00 |
| 206-D | REMOVING FENCE | LF | 360 | \$ 5.82 | \$ 2,095.20 | \$ 5.00 | \$ 1,800.00 | \$ 25.00 | \$ 9,000.00 |
| 210-A | UNCLASSIFIED EXCAVATION | CY | 2,550 | \$ 18.31 | \$ 46,690.50 | \$ 19.50 | \$ 49,725.00 | \$ 18.00 | \$ 45,900.00 |
| 210-D | BORROW EXCAVATION, SELECT FILL (A-2-4) | CY (TBM) | 760 | \$ 25.70 | \$ 19,532.00 | \$ 41.00 | \$ 31,160.00 | \$ 20.00 | \$ 15,200.00 |
| 301-A | CRUSHED AGGREGATED BASE COURSE, TYPE B 6" Thick | SY | 940 | \$ 30.22 | \$ 28,406.80 | \$ 28.00 | \$ 26,320.00 | \$ 35.00 | \$ 32,900.00 |
| 429-A2 | IMPROVED BITUMINOUS CONCRETE WEARING SURFACE, 1/2" MAX AGGREGATE SIZE MIX, ESAL RANGE A/B. APPROX. 165LB/SY, (INCL. TACK COAT) | TON | 78 | \$ 242.86 | \$ 18,943.08 | \$ 335.00 | \$ 26,130.00 | \$ 275.00 | \$ 21,450.00 |
| 533-A | 18" HDPE STORM SEWER PIPE | LF | 48 | \$ 55.95 | \$ 2,685.60 | \$ 204.00 | \$ 9,792.00 | \$ 83.58 | \$ 4,011.84 |
| 600-A | MOBILIZATION | LS | 1 | \$ 26,374.60 | \$ 26,374.60 | \$ 58,900.00 | \$ 58,900.00 | \$ 15,327.22 | \$ 15,327.22 |
| 610-A | RIPRAP CL 2, 18" THICK | TON | 35 | \$ 104.02 | \$ 3,640.70 | \$ 188.00 | \$ 6,580.00 | \$ 175.00 | \$ 6,125.00 |
| 610-D | FILTER CLOTH, NON-WOVEN | SY | 44 | \$ 5.28 | \$ 232.32 | \$ 20.00 | \$ 880.00 | \$ 2.75 | \$ 121.00 |
| 614-B1 | CONCRETE SLOPE PAVING (FLUMES) | CY | 4 | \$ 895.68 | \$ 3,582.72 | \$ 755.00 | \$ 3,020.00 | \$ 585.00 | \$ 2,340.00 |
| 618-A1 | CONCRETE SIDEWALK, 4" THICK | SY | 90 | \$ 72.65 | \$ 6,538.50 | \$ 115.00 | \$ 10,350.00 | \$ 85.00 | \$ 7,650.00 |
| 621-A | OUTFALL STRUCTURE | EA | 2 | \$ 4,521.25 | \$ 9,042.50 | \$ 9,370.00 | \$ 18,740.00 | \$ 4,356.25 | \$ 8,712.50 |
| 621-B | SLOPE PAVED HEADWALL | EA | 2 | \$ 1,205.68 | \$ 2,411.36 | \$ 1,500.00 | \$ 3,000.00 | \$ 1,800.00 | \$ 3,600.00 |
| 623-B | 6" VERTICAL CURB | LF | 248 | \$ 27.87 | \$ 6,911.76 | \$ 38.00 | \$ 9,424.00 | \$ 35.00 | \$ 8,680.00 |

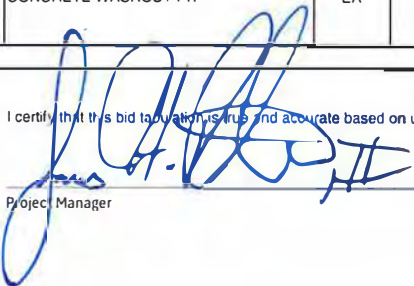
BID TABULATION

| ITEM # | DESCRIPTION | UNIT | QTY | PL Russell | | Triptek Construction | | L & K Construction | |
|---------------------|--|----------|-------|----------------------|--------------|----------------------|--------------|----------------------|--------------|
| | | | | UNIT PRICE | AMOUNT | UNIT PRICE | AMOUNT | UNIT PRICE | AMOUNT |
| 627-D2 | CONCRETE PARKING BUMPERS | EA | 14 | \$ 82.50 | \$ 1,155.00 | \$ 92.00 | \$ 1,288.00 | \$ 62.50 | \$ 875.00 |
| 650-A | TOPSOIL, 3" THICK | CY (TBM) | 200 | \$ 26.07 | \$ 5,214.00 | \$ 53.00 | \$ 10,600.00 | \$ 30.00 | \$ 6,000.00 |
| 650-B | TOPSOIL, 3" THICK (FROM STOCKPILES) | CY (TBM) | 300 | \$ 15.07 | \$ 4,521.00 | \$ 24.00 | \$ 7,200.00 | \$ 30.00 | \$ 9,000.00 |
| 652-A | SEEDING & MULCHING | ACRE | 1 | \$ 1,867.00 | \$ 1,867.00 | \$ 3,450.00 | \$ 3,450.00 | \$ 1,500.00 | \$ 1,500.00 |
| 654-A | SOLID SODDING | SY | 4,400 | \$ 5.76 | \$ 25,344.00 | \$ 6.00 | \$ 26,400.00 | \$ 10.00 | \$ 44,000.00 |
| 665-J | SILT FENCE | LF | 1,660 | \$ 5.22 | \$ 8,665.20 | \$ 6.00 | \$ 9,960.00 | \$ 5.50 | \$ 9,130.00 |
| 665-P | INLET PROTECTION, BLOCK & GRAVEL | EA | 2 | \$ 191.45 | \$ 382.90 | \$ 994.00 | \$ 1,988.00 | \$ 925.00 | \$ 1,850.00 |
| 665-Q | WATTLES | LF | 300 | \$ 10.13 | \$ 3,039.00 | \$ 11.50 | \$ 3,450.00 | \$ 15.00 | \$ 4,500.00 |
| 701-A7 | SOLID WHITE, CLASS 1, TYPE A PARKING STRIPE, 5" WIDE | LF | 200 | \$ 0.99 | \$ 198.00 | \$ 3.50 | \$ 700.00 | \$ 3.12 | \$ 624.00 |
| 701-A-B | SOLID BLUE, CLASS 1, TYPE A, H/C PARKING & LOADING STRIPE, 5" WIDE | LF | 260 | \$ 0.99 | \$ 257.40 | \$ 3.50 | \$ 910.00 | \$ 6.25 | \$ 1,625.00 |
| 703-A | TRAFFIC CONTROL MARKINGS, CLASS 1, TYPE A, BLUE (HC MARKINGS) | SF | 24 | \$ 2.20 | \$ 52.80 | \$ 32.00 | \$ 768.00 | \$ 12.50 | \$ 300.00 |
| 703-B | TRAFFIC CONTROL LEGENDS, CLASS 1, TYPE A (STOP BAR) | SF | 28 | \$ 2.20 | \$ 61.60 | \$ 32.00 | \$ 896.00 | \$ 12.50 | \$ 350.00 |
| 710-A | STOP SIGN (INCL POST) | EA | 1 | \$ 385.00 | \$ 385.00 | \$ 750.00 | \$ 750.00 | \$ 500.00 | \$ 500.00 |
| 999-A | CONSTRUCTION ENTRANCE PAD | EA | 1 | \$ 4,013.00 | \$ 4,013.00 | \$ 6,325.00 | \$ 6,325.00 | \$ 5,000.00 | \$ 5,000.00 |
| 999-B | CONCRETE WASHOUT PIT | EA | 1 | \$ 50.00 | \$ 50.00 | \$ 2,000.00 | \$ 2,000.00 | \$ 5,000.00 | \$ 5,000.00 |
| TOTAL AMOUNT | | | | \$ 270,921.30 | \$ | \$ 357,660.00 | \$ | \$ 303,321.56 | \$ |

I certify that this bid tabulation is true and accurate based on unit prices provided by each individual bidder.

Project Manager

Date



7-1-24

CONTRACT DOCUMENTS, PROPOSAL and SPECIFICATIONS

City of Spanish Fort Huckleberry Lane Dog Park



JUNE 2024

Prepared by:



ADDENDUM NO. 1

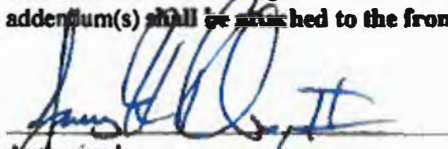
June 27, 2024

**CITY OF SPANISH FORT, AL
HUCKLEBERRY LANE DOG PARK**

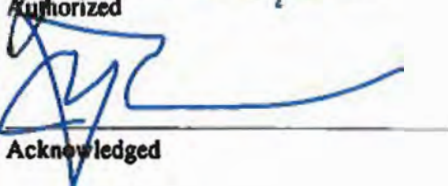
QUESTIONS:

- **Q: Verify if contractor is responsible for crepe myrtles on the landscape drawings.**
A: No, the contractor is not responsible for any tree planting on the project.
- **Q: Verify if the contractor will supply sidewalks?**
A: The contractor is responsible for the entire sidewalk along the north side of parking lot. Contractor is only responsible for subgrade prep for pavilion and concrete area around pavilion.
- **Q: Are the trees marked with green flagging meant to be kept?**
A: The City marked (in green) all trees that they would prefer to remain, however, any trees flagged that are located in the parking areas, sidewalks, drainage pond, or other critical areas must be removed.
- **Q: Can the contractor burn the trees/brush?**
A: No, there is a burn ban.
- **Q: Can the contractor grind the stumps?**
A: Contractor is allowed to grind stumps within the fenced area of the dog park; however, they must completely remove all stumps located within the parking lot, pavilion, sidewalk or pond area.

This document shall be signed, scanned and emailed back to the Engineer for proof of receipt. All signed addendum(s) shall be attached to the front cover of the sealed proposal.


Authorized

6-27-24
Date


Acknowledged

6/28/24
Date



CONTRACT DOCUMENTS, PROPOSAL AND SPECIFICATIONS

City of Spanish Fort, Alabama Huckleberry Lane Dog Park

I N D E X

| <u>SECTION</u> | <u>DESCRIPTION</u> | <u>PAGE NO.</u> |
|----------------|--|-----------------|
| I | ADVERTISEMENT FOR BIDS | 3 |
| II | INSTRUCTIONS TO BIDDER | 5 |
| III | CERTIFICATE OF CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE | 10 |
| IV | INSTRUCTIONS TO CONTRACTORS AND INSURERS | 12 |
| V | BIDDER'S PROPOSAL | 14 |
| VI | BID BOND | 19 |
| VII | PERFORMANCE BOND | 21 |
| VIII | LABOR AND MATERIALS BOND | 23 |
| IX | CONTRACT FOR CONSTRUCTION | 25 |
| X | GENERAL CONDITIONS | 28 |

SECTION I

ADVERTISEMENT FOR BIDS

Sealed bids will be received by the City of Spanish Fort at **7361 Spanish Fort Boulevard, Spanish Fort Alabama 36527** until **2:00 p.m. CST on Monday, July 1, 2024** and then publicly opened and read in the Council Chambers for:

City of Spanish Fort – Huckleberry Lane Dog Park

This project consists of the construction of a new asphalt paved parking lot, associated sidewalks, and two (2) detention ponds. Work items include 105 tons of asphalt wearing surface, 940 square yards of aggregate base, 650 cubic yards of borrow excavation, 2,330 cubic yards of unclassified excavation, and 90 square yards of 4” thick concrete sidewalks.

A total of sixty (60) calendar days will be allowed for completion of work.

Drawings and specifications may be obtained at Sawgrass Consulting, LLC, 30673 Sgt. E.I. “Boots” Thomas Dr, Spanish Fort, Alabama, 36527 for a non-refundable fee of \$85.00. Neither Owner nor Engineer will be responsible for full or partial sets of Bidding Documents, including Addenda, if any, obtained from sources other than this office. For more information, call (251) 544-7900 or email mtomaso@sawgrassllc.com and/or hbell@sawgrassllc.com. Prospective bidders may examine the Bidding Documents at this office Monday through Friday between 9:00 a.m. and 4:00 p.m.

A mandatory pre-bid conference will be held in the Council Chambers at Spanish Fort City Hall at 2:00 p.m. on Monday June 24, 2024. In the pre-bid conference, the City will review the scope of work and the desired result.

To be eligible for consideration, bids must be submitted on complete original proposal forms found in the Invitation to Bid package. **The complete bid packet and all executed bid forms must be submitted in a sealed envelope, clearly marked, identifying the Contractor’s license number, the Contractor’s name and address, the bid name, and the date of the bid opening.** It shall be the sole responsibility of the bidder to assure receipt of the bid at Spanish Fort City Hall prior to the published time for the bid opening. **The envelopes must also be “Date and Time” stamped at the receptionist’s desk when the bid packages are turned in.**

All Bidders must file with their bids either a cashier’s check drawn on an Alabama bank or a bid bond executed by a surety company duly authorized and qualified to make bonds in the State of Alabama and made payable to the City of Spanish Fort in the amount of five (5%) percent of the Contractor’s bid but in no event more than \$10,000, and shall have a current State of Alabama General Contractors License. Furthermore, any Contractor that desires to bid as prime Contractor must have at least one of the following major classifications of license per Section 230-X-.27 of the State of Alabama Licensing Board for General Contractors Administrative Code:

- a) Highways and Streets
- b) Municipal and Utility
- c) Heavy and Rail Construction

If awarded the bid and prior to beginning work, the Contractor is required to have a current City of Spanish Fort Business License, furnish a Certificate of General Liability Insurance and Workers Compensation Insurance, and proof of Automobile General Liability Insurance. Insurance Certificate provided to the City shall list the City of Spanish Fort as an additional insured. A Performance Bond and Payment Bond must be executed upon award of the bid with a penalty equal to one hundred (100%) percent of the amount of the contract price. If the successful bidder's award amount is \$50,000.00 or greater, a background check will be performed per City of Spanish Fort General Conditions.

All bidders bidding in amounts exceeding that established by the State Licensing Board for General Contractors must be licensed under the provisions of Title 34, Chapter 8, Code of Alabama, 1975, and must provide evidence by including a copy of his or her current license in the sealed envelope in which the proposal is delivered.

The City of Spanish Fort reserves the right to accept or reject any or all bids and to waive technical errors if, in the City's judgment, the best interests of the City will thereby be promoted.
Owner: City of Spanish Fort, Alabama

SECTION II

INSTRUCTIONS TO BIDDERS

Hereinafter Contract Documents shall include "Contract Documents, Proposal and Specifications", Sections I through Appendix; Owner shall be City of Spanish Fort; Engineer shall be Sawgrass Consulting, LLC.

1. RECEIPT AND OPENING OF BIDS:

The Owner invites bids on the form attached hereto, all blanks of which must be appropriately filled in. Bids will be received by City of Spanish Fort City Hall at 7361 Spanish Fort Boulevard. 2:00 p.m., local time on Monday, July 1, 2024.

The envelopes containing the bids must be sealed and addressed to the City of Spanish Fort 7361 Spanish Fort Boulevard, Spanish Fort, Alabama 36527. The Contractor's name and **license number** must be clearly shown on the outside of the envelope. **The entire booklet must be submitted as the bid.**

Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered.

Forms furnished, or copies thereof shall be used, and strict compliance with requirements of the invitation, these instructions and the general specifications for material and construction are necessary. Bidders must make their own estimates of the facilities and difficulties attending the proposed contract, including local conditions, uncertainty of weather, quantities, and all other contingencies. All designations and prices shall be fully and clearly set forth. The proper blank spaces in the bid and guaranty forms shall be suitably filled in.

2. TELEGRAPHIC MODIFICATION:

Any bidder may modify his bid by telegraphic communication at any time prior to the scheduled closing time for receipt of bids, provided such telegraphic communication is received by the Owner prior to the closing time and provided further, the Owner is satisfied that a written confirmation of the telegraphic communication of the telegraphic modification over the signature of the bidder was mailed prior to closing time. If written confirmation is not received with two in (2) days from the closing time, no consideration will be given to the telegraphic modification.

3. LABOR AND MATERIALS:

The Owner will not furnish any labor, material, or supplies unless specifically provided for in the contract. This obligation is strictly upon the bidder unless otherwise noted.

4. **SIGNATURE TO BIDS:**

Each bid must give the full business address of the bidder and be signed by him with his usual signature. Bids by partnerships must furnish the full names of all partners and must be signed with the partnership name by one of the members of the partnership, or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State of Incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it into the matter. The name of each person shall also be typed or printed below the signature. A bid by a person who affixes to his signature the word "president", "secretary", "agent", or other designation without disclosing his principal, may be held to the bid of the individual signing. When requested by the Owner, satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished.

5. **BIDDER QUALIFICATIONS:**

The Owner may make a request as it deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. It is the preference of the City of Spanish Fort that the bidder be pre-qualified by the Consultant to perform the work. **If awarded and prior to beginning work, the Contractor is required to have a current City of Spanish Fort Business License.**

6. **GUARANTY AND INSURANCE:**

Security is required to insure the execution of the Contract and bond for performance of the services, and no bid will be considered unless it is so guaranteed. The bidders must furnish with their bid a Guaranty Bond or certified check in the amount of five (5%) percent of their bid price, but in no event more than ten thousand (\$10,000.00) dollars, payable to the Owner. Certified check or Bid Bonds, will, at the option of the Owner, be deposited into the funds of the Owner, as liquidated damages upon failure of the successful bidder to execute the written Contract and furnish the insurance coverage as hereinafter required, within ten consecutive calendar days following written notice of the award of the Contract.

7. **BONDS AND INSURANCE:**

The bonds and insurance policies of any surety company or insurance company respectively, authorized to do business in the State of Alabama will be accepted as security and insurance as required, for any bid or contract. See the instruction hereinafter contained and the applicable standard forms with respect to the type, form and amounts of required bonds and insurance policies.

8. **SPECIFICATIONS AND SCHEDULES:**

The specifications, conditions, schedules, and drawings which form the basis of any bid will be considered as a part thereof and will form a part of the Contract. Copies of these papers, together with a copy of the standard contract form, including authorized additions, or deletions, if any, will be furnished to or made available for the inspection of bidders by the office indicated in the advertisement or invitation.

9. **CORRECTIONS:**

Erasures or other changes in the bids must be explained or noted over the signature of the bidder.

10. **WITHDRAWAL OF BIDS:**

Bids may be withdrawn by written or telegraphic request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened.

11. **BIDDERS PRESENT:**

At the time fixed for the opening of the bids, their contents will be made public for the information of bidders and others properly interested, who may be present either in person or by representation.

12. **AWARD OR REJECTION OF BIDS:**

The contract will be awarded to the lowest responsible bidder complying with the conditions of the invitation for bids, provided this bid is reasonable and it is in the best interest of the Owner to accept it. The bidder to whom the award is made will be notified as soon as possible. The Owner, however, reserves the right to reject all bids and to waive informality in bids received whenever such rejection or waiver is in the interest of the Owner.

It also reserves the right to reject the bid of a bidder who has previously failed to perform properly or complete on time a contract of a similar nature, or a bid of a bidder who is not in a position to perform the contract.

13. **BIDDERS INTERESTED IN MORE THAN ONE BID:**

If more than one bid be offered by any one party, by or in the name of his or their clerk, partner, or other person, all such bids may be rejected. A party who has quoted prices on materials to a bidder is not thereby disqualified from quoting prices to other bidders or from submitting a bid directly for the materials or work.

14. **ERRORS IN BID:**

Bidders or their authorized agents are expected to examine the maps, drawings, specifications, and all other instructions pertaining to the work, which will be open to their inspection. Failure to do so will be at the Bidder's own risk, and he cannot secure relief on the plea of error in the bid. In case of error in the extension of prices, the unit price, will govern.

15. **CONTRACT AND BOND:**

The bidder to whom award is made must, when required, enter written contract on the Contract Document provided herein with satisfactory security of 100 Percent Payment and Performance Bond in the amount required, within the period specified or, if no period is specified, within (10) days after the prescribed forms are presented to him for signature.

16. COLLUSION:

If there is any reason for believing that collusion exists among the Bidders, any or all proposals may be rejected, and those participating in such collusion may be barred from submitting bids on the same or other work with the Owner.

17. SUBLETTING OR ASSIGNING OF CONTRACT:

(a) Limitations: The Contractor shall not sublet, assign, transfer, convey, sell, or otherwise dispose of any portion of the contract, his right, title, or interest therein, or his power to execute such contract, to any person, firm or corporation without written consent of the Owner and such written consent shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract. Unless otherwise stipulated in the proposal or special provisions and with the assistance of workmen under his immediate superintendence and reported on his payroll, all contract work of a value not less than forty percent (40%) of the total contract amount, except that any items designated in the contract as "Specialty Items" may be performed by subcontract, may be deducted from the total contract amount before computing the amount of work required to be performed by the contractor with his own organization.

(b) Subcontractor's Status: A subcontractor shall be recognized only in the capacity of an employee or agent of the contractor, and the contractor will be responsible to the Owner for all of the subcontractor's work, including failures or omissions. The subcontractor removal may be required by the Engineer, as in case of an employee.

18. TIME OF COMPLETION:

Bidders must agree to commence on or before a date to be specified in written "work order" of the Owner and to fully complete the project within sixty (60) calendar days thereafter. The bidder must agree also to pay, as liquidated damages, and not as a penalty, the sum shown in this document for each calendar day required thereafter.

19. ADDENDA AND INTERPRETATIONS:

No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any bidder orally.

Every request for such interpretation should be in writing, addressed to Sawgrass Consulting, LLC, 30673 Sgt. E.I. Boots Thomas Dr, Spanish Fort, Alabama 36527, and to be given consideration, must be received at least five (5) days prior to the date fixed for the opening of bids. All such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which if issued, will be forwarded by email or mailed by certified mail with return receipt requested to all prospective bidders (at the respective addresses furnished for such purposes). Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

20. POWER OF ATTORNEY:

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

21. **LAWS AND REGULATIONS:**

The bidders attention is directed to the fact that all applicable state laws, municipal ordinances, and rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

22. **OBLIGATION OF BIDDER:**

At the time of the opening of bids each bidder will be presumed to have read and to be thoroughly familiar with the plans and contract documents (including all addenda). The failure or omission of any bidder to examine any form, instrument or document shall in no way relieve any bidder from any obligation in respect of his bid.

23. **QUANTITIES:**

The quantities indicated are to aid the contractor in bidding only and any variance upward or downward in quantities shown will not alter the contract unit price.

24. **UTILITIES:**

All information given on the drawings or in the contract documents relative to existing utilities and other structures is from the best source at present available. All such information is furnished only for the information and convenience of the bidders.

The Contractor shall be responsible for any damages to existing utilities and shall repair and/or replace any damages to said utilities at his own expense.

25. **MAINTENANCE PERIOD:**

The Contractor will be required to maintain the project for a period of thirty (30) calendar days after acceptance by the Owner and warranty the project for one full calendar year upon substantial completion.

SECTION III

**CERTIFICATE OF
CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE TO OWNER**

OWNER: _____ DATE: _____

This is to certify that the policies designated below have been issued by the _____ and are in full force on the date borne by this certificate.

1. Location and designation of project:

**Huckleberry Lane Dog Park
Spanish Fort, Alabama**

2. Name and address of insured for whom this certificate is issued:

3. Type of insurance/Limits of Liability

- (a) Workmen's Compensations:

(policy number)(exp. date) (coverage) (aggregate)
(one person) (one accident)

- (b) Contractor's Public Liability:

1. Bodily Injury:

(each person) (each occurrence) (total coverage)

2. Property Damage:

(each accident) (aggregate)

- (c) Automobile (Motor Vehicle):

1. Bodily Injury:

(each person) (each occurrence) (total coverage)

2. Property Damage:

(each accident) (aggregate)

(d) Owner's Protective Liability:

(Each Occurrence)
(Bodily Injury)

(Each Occurrence)
(Property Damage)

Such insurance as is afforded by the above policies covers the operations undertaken by the insured with respect to the construction of the project above designated. The insurance afforded by the above designated policies, specimen copies of which have been filed with the Owner, include the following endorsement.

The insurer agrees with the insured as follows:

1. That it will furnish to said Owner a certificate of insurance in triplicate on a form approved for such purpose by said Owner, setting forth the pertinent information regarding the policy to which this endorsement is attached, for each project of said Owner to which the policy applies.
2. That it will attach to each said certificate of insurance executed copies of any endorsement other than this endorsement which are attached to said policy at the time said policy is issued, provided only that said endorsements affect the coverage of said policy in respect of operations involved in the construction of the projects of said Owner to which the policy applies.
3. That it will mail to the Owner three executed copies of each endorsement subsequently issued to become a part of said policy provided only that endorsement affects the coverage of said policy in respect of operations involved in the construction of the project of said Owner which the policy applies and provided further that such endorsement shall not be effective unless such notice is given to the Owner at the same time that notice thereof is given to the insured.
4. That it will mail to the Owner at least ten (10) days before the effective date thereof notice of cancellation of said policy, provided no cancellation shall be effective unless such notice is given to the Owner.

Insurer

BY _____
Authorized Representative

SECTION IV

INSTRUCTIONS TO CONTRACTORS AND INSURERS

CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE:

The Contractor shall not commence work under this Contract until he has obtained all the insurance required under this contract and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved.

COMPENSATION INSURANCE:

The Contractor shall procure and shall maintain during the life of this Contract Workmen's Compensation Insurance for all his employees to be engaged in work on the project under this Contract, and in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Statute. The Contractor shall provide and shall cause each subcontractor to provide adequate Employer's General Liability Insurance for the protection of such of his employees as are not otherwise protected.

CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE:

The Contractor shall procure and shall maintain during the life of this Contract a Comprehensive Liability Policy providing bodily injury coverage on an occurrence basis and property damage coverage on an accident basis, including damage arising from blasting, explosion or collapse, mechanical equipment digging in streets or highways, and including completed operations, independent Contractors, and Contractual General Liability Insurance. These policies shall provide limits of liability in the amount of \$1,000,000 combined single limit per occurrence for bodily injury and property damage; \$2,000,000 aggregate.

The Contractor agrees to maintain such completed operations coverage as is required in this section for a period of one year from the date of acceptance of the work by the Owner or at the date of the final amounts owed the Contractor by the Owner, whichever occurs first.

COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE:

The Contractor agrees to carry a Comprehensive Automobile Liability Policy providing bodily injury liability on an occurrence basis and providing property damage liability on an accident basis. This policy shall protect the Contractor against all liability arising out of the use of automobiles, both private, passenger, and commercial, regardless of whether such vehicles shall be owned by the Contractor, owned by others, or be hired. Limits of liability for Comprehensive Automobile Liability Insurance shall be \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

OWNER'S PROTECTIVE LIABILITY INSURANCE: The Contractor shall at his expense provide Owner Protective Liability Policies issued in the names of the *Owner and Engineer* covering their liability for operation of the Contractor. These policies shall provide limits of liability in the amount of \$1,000,000 combined single limit per occurrence for bodily injury and property damage; \$2,000,000 aggregate.

The following items should be listed in "Description of Operations" section of the certificate:

Name of Owner listed as Additional Insured

Description of the Huckleberry Lane Dog Park shall be listed for insurance coverage clarification

INDEMNITY PROVISIONS:

The Contractor shall indemnify, defend and hold harmless the Owner and the Engineer and their agents and employees from and against all claims, damages, losses, demands, payments, suits, actions, recoveries and judgments of every nature and description and expense, including attorneys' fees and cost arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense: (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom; and (2) is caused in whole or in part by an act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

The Contractor shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of Work until the same shall have been completed and accepted. He shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation, or order. The Contractor shall give to the proper authorities all required notices relating to the Work, obtain all official permits and licenses and pay all proper fees. He shall make good any injury that may have occurred to any adjoining building, structure, or utility in consequence of the Work.

In any and all claims against the Owner or the Engineer or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under the "INDEMNITY PROVISIONS" shall not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Contractor under these Paragraphs shall not extend to the liability of the Engineer's negligent acts, errors, or omissions, or those of his employees or agents.

SUBCONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE:

The Contractor shall require each of his subcontractors to produce and maintain during the life of his subcontract, subcontractor's Public Liability and Property Damage Insurance of the type specified in the above paragraph hereof in amounts approved by the Owner.

This certificate shall be used in submitting evidence of compliance with the above requirements. The insurance company's representative shall execute four signed copies of the certificate plus such additional copies as may be required for the company's records. One executed copy shall be forwarded to the Contractor for attachment to the original policy as an endorsement, and three copies shall be submitted to the Owner.

Three executed copies of each subsequent endorsement affecting the coverage of policies, and of each cancellation shall be forwarded to the Owner in accordance with Items 3 and 4 of the insurer's agreement contained in this certificate.

SECTION V

PROPOSAL

DATE: 5/1/24

Proposal of PL RUSSELL LLC

Alabama License No. 57754 for constructing **Huckleberry Lane Dog Park**; for the performance of all work and the furnishing of all labor and materials required by the Contract terms, specifications, and special provisions.

The specifications are attached hereto and specified and made a part hereof.

TO: **Huckleberry Lane Dog Park**
City of Spanish Fort, Alabama

Dear Sirs:

The following proposal is made on behalf of PL RUSSELL and no others. Evidence of PL authority to submit the proposal is herewith furnished. The proposal is made without collusion on the part of any person, firm, or corporation.

PL certify that PL have carefully examined the plans for this project, and the specifications hereto attached, including the special provisions, and have also personally examined the site of work. On the basis of the specifications and plans, PL propose to furnish all necessary machinery, tools, apparatus, and other means of construction, and do all the work and furnish all the material in the manner specified.

PL further agree to complete all the work in Sixty (60) calendar days.

PL understand that the quantities below are approximate only and are subject to either increase or decrease, and hereby propose to perform any increased or decreased quantities of work at the unit prices bid.

PL further propose to perform all "Force Account or Extra Work" that may be required of PL on the basis provided in the specifications hereto attached, and to give such work PL personal attention in order to see that it is economically performed.

PL further propose to execute the attached Contract Agreement as soon as the work is awarded to and to begin and complete the work within the respective time limit provided for in the specifications and Notice to Contractors hereto attached.

The following items shall be constructed in accordance with the State of Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, and the City of Spanish Fort Design and Construction Standard, with all the latest additions and amendments, except as modified herein:

NOTES:

1. The following unit prices shall include all labor, materials, equipment removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.
2. Bidder understands that the Owner reserves the right to reject any and all bids.
3. The Bidder understands that he must submit this entire booklet with the bid.
4. The Bidder understands that the unit prices govern for all pay items pricing submitted.
5. Quantities supplied on Plan Set.

SCHEDULE OF ITEMS
Huckleberry Lane Dog Park

| ITEM # | DESCRIPTION | UNIT | QTY | UNIT PRICE | AMOUNT |
|--------|--|----------|-------|------------|-----------|
| 201-A | CLEARING & GRUBBING (1.6 ACRES) | LS | 1 | 38,500.00 | 38,500.00 |
| 206-C | SAWCUTT & REMOVE EXIST ASPHALT | SY | 8 | 15.97 | 127.76 |
| 206-D | REMOVING FENCE | LF | 360 | 5.82 | 2,095.20 |
| 210-A | UNCLASSIFIED EXCAVATION | CY | 2,550 | 18.31 | 46,690.50 |
| 210-D | BORROW EXCAVATION, SELECT FILL (A-2-4) | CY (TBM) | 760 | 25.70 | 19,532.00 |
| 301-A | CRUSHED AGGREGATED BASE COURSE, TYPE B 6" Thick | SY | 940 | 30.22 | 28,406.80 |
| 429-A2 | IMPROVED BITUMINOUS CONCRETE WEARING SURFACE, 1/2" MAX AGGREGATE SIZE MIX, ESAL RANGE A/B. APPROX. 165LB/SY, (INCL. TACK COAT) | TON | 78 | 242.86 | 18,943.08 |

| ITEM # | DESCRIPTION | UNIT | QTY | UNIT PRICE | AMOUNT |
|--------|--|-------------|-----|------------|-----------|
| 533-A | 18" RCP STORM SEWER PIPE | LF | 48 | 55.95 | 2,685.60 |
| 600-A | MOBILIZATION | LS | 1 | 26,374.60 | 26,374.60 |
| 610-A | RIPRAP CL 2, 18" THICK | TON | 35 | 104.02 | 3,640.70 |
| 610-D | FILTER CLOTH, NON-WOVEN | SY | 44 | 5.28 | 232.32 |
| 614-B1 | CONCRETE SLOPE PAVING (FLUMES) | CY | 4 | 895.68 | 3,582.72 |
| 618-A1 | CONCRETE SIDEWALK, 4" THICK | SY | 90 | 72.65 | 6,538.50 |
| 621-A | OUTFALL STRUCTURE | EA | 2 | 4,521.25 | 9,042.50 |
| 621-B | SLOPE PAVED HEADWALL | EA | 2 | 1,205.68 | 2,411.36 |
| 623-B | 6" VERTICAL CURB | LF | 248 | 27.87 | 6,911.76 |
| 627-D2 | CONCRETE PARKING BUMPERS | EA | 14 | 82.50 | 1,155.00 |
| 650-A | TOPSOIL, 3" THICK | CY (TBM) | 200 | 26.07 | 5,214.00 |
| 650-B | TOPSOIL, 3" THICK (FROM STOCKPILES) | CY (TBM) | 300 | 15.07 | 4,521.00 |
| 652-A | SEEDING & MULCHING | ACRE | 1 | 1,867.00 | 1,867.00 |

| ITEM # | DESCRIPTION | UNIT | QTY | UNIT PRICE | AMOUNT |
|--------------|--|------|-------|------------|------------|
| 654-A | SOLID SODDING | SY | 4,400 | 5.76 | 25,344.00 |
| 665-J | SILT FENCE | LF | 1,660 | 5.22 | 8,665.20 |
| 665-P | INLET PROTECTION, BLOCK & GRAVEL | EA | 2 | 191.45 | 382.90 |
| 665-Q | WATTLES | LF | 300 | 10.13 | 3,039.00 |
| 701-A7 | SOLID WHITE, CLASS 1, TYPE A PARKING STRIPE, 5" WIDE | LF | 200 | 0.99 | 198.00 |
| 701-A-8 | SOLID BLUE, CLASS 1, TYPE A, H/C PARKING & LOADING STRIPE, 5" WIDE | LF | 260 | 0.99 | 257.40 |
| 703-A | TRAFFIC CONTROL MARKINGS, CLASS 1, TYPE A, BLUE (HC MARKINGS) | SF | 24 | 2.20 | 52.80 |
| 703-B | TRAFFIC CONTROL LEGENDS, CLASS 1, TYPE A (STOP BAR) | SF | 28 | 2.20 | 61.60 |
| 710-A | STOP SIGN (INCL POST) | EA | 1 | 385.00 | 385.00 |
| 999-A | CONSTRUCTION ENTRANCE PAD | EA | 1 | 4,013.00 | 4,013.00 |
| 999-B | CONCRETE WASHOUT PIT | EA | 1 | 50.00 | 50.00 |
| TOTAL AMOUNT | | | | | 270,921.30 |

PL RUSSELL LLC 57754
CONTRACTOR'S NAME & GENERAL CONTRACTOR'S LICENSE NUMBER

_____ also propose to furnish a Contract Performance Bond, approved by the Owner in an amount equal to the total amount of the bid. This bond shall serve not only to guarantee the completion of the work on _____ part, but also to guarantee the excellence of both workmanship and materials until the work is finally accepted.

Signature of Bidder (If Firm or Individual) _____

By: _____

Address of Bidder _____

Names and Addresses of Members of Firm _____

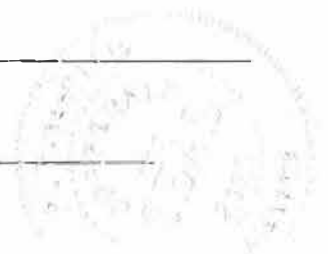
Signature of Bidder (Corporation) _____

Ben Russell Business Address 251 SAINT ANTHONY ST MOBILE, AL 36603
President

_____ Business Address _____

Sect. & Treas.

Attest: [Signature] Incorporated in ALABAMA
(CORPORATE SEAL) (STATE)



ITEM VI

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That PL Russell, LLC of
(Name of Contractor)

251 Saint Anthony Street, Mobile, AL 36603
(Address)

as Principal, and Western Surety Company of
(Name of Surety)

151 N. Franklin Street, Chicago, IL 60606, as Surety, are held and
(Address)

firmly bound unto **CITY OF SPANISH FORT, ALABAMA**, as Obligee, in the full and just sum of **FIVE PERCENT (5%) OF AMOUNT BID** lawful money of the United States, for the payment (maximum amount of bond \$10,000) of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal is herewith submitting its proposal for:

City of Spanish Fort

Huckleberry Lane Dog Park

The condition of this obligation is such that, if the aforesaid Principal shall be awarded the Contract the said Principal will, within the time required, enter into a formal Contract and give a good and sufficient bond to secure the performance of the terms of and conditions of the Contract, then this obligation to be void; otherwise, the Principal and the Surety will pay unto the Obligee the difference in money between the amount of the Contract as awarded and the amount of the proposal of the next lowest bidder, which amount shall not exceed ten thousand (\$10,000.00) dollars. If no other bids are received, the full amount of the proposal guarantee shall be so retained or recovered as liquidated damages for such default.

Signed, Scaled and Delivered

July 1st, 2024

Date

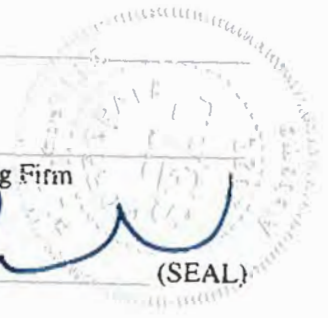
Witness as to Principal:

PL Russell, LLC

Contracting Firm

BY:

(SEAL)



COUNTERSIGNED:

Joshua Price - Resident Agent

Western Surety Company

Name of Surety

(SEAL)

BY:

Joshua Price - Attorney-in-Fact

BIDS WILL NOT BE CONSIDERED UNLESS BID BOND IS SIGNED BY PRINCIPAL AND SURETY.

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Thomas J Gentile, Billie Jo Sanders, Renee Ellis, Paul B Scott Jr, David J Durden, Joshua Price, Individually

of Montgomery, AL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature – In Unlimited Amounts - for any and all surety bonds and any and all consents required by the State Department of Transportation of the State of Florida, incident to the release of retained percentages and/or estimates on engineering and/or construction contracts - and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 6th day of January, 2022.



WESTERN SURETY COMPANY

Handwritten signature of Paul T. Bruflat in black ink.

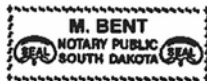
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 6th day of January, 2022, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

March 2, 2026



Handwritten signature of M. Bent in black ink.

M. Bent, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 1st day of July, 2024.



WESTERN SURETY COMPANY

Handwritten signature of L. Nelson in black ink.

L. Nelson, Assistant Secretary

Form F428-7-2012

Go to www.cnasurety.com > Owner / Oblige Services > Validate Bond Coverage, if you want to verify bond authenticity.

ITEM VI

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____ of
(Name of Contractor)

(Address)

as Principal, and _____ of
(Name of Surety)

_____, as Surety, are held and
(Address)

firmly bound unto **CITY OF SPANISH FORT, ALABAMA**, as Obligee, in the full and just sum of **FIVE PERCENT (5%) OF AMOUNT BID** lawful money of the United States, for the payment (maximum amount of bond \$10,000) of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal is herewith submitting its proposal for:

City of Spanish Fort

Huckleberry Lane Dog Park

The condition of this obligation is such that, if the aforesaid Principal shall be awarded the Contract the said Principal will, within the time required, enter into a formal Contract and give a good and sufficient bond to secure the performance of the terms of and conditions of the Contract, then this obligation to be void; otherwise, the Principal and the Surety will pay unto the Obligee the difference in money between the amount of the Contract as awarded and the amount of the proposal of the next lowest bidder, which amount shall not exceed ten thousand (\$10,000.00) dollars. If no other bids are received, the full amount of the proposal guarantee shall be so retained or recovered as liquidated damages for such default.

Signed, Sealed and Delivered _____
Date

Witness as to Principal: _____
Contracting Firm

BY: _____ (SEAL)

COUNTERSIGNED: _____ (SEAL)
Name of Surety

BY: _____

BIDS WILL NOT BE CONSIDERED UNLESS BID BOND IS SIGNED BY PRINCIPAL AND SURETY.

SECTION VII

PERFORMANCE BOND

KNOW ALL MEN: That we _____
(Insert here the name and address or legal title of the Contractor)

_____ hereinafter called the Principal,

_____ (Insert here the name and address or legal title of one or more Sureties)

_____ and

_____ and

_____ hereinafter called the Surety or Sureties, are held and firmly bound unto the Owner, City of Spanish Fort, Alabama in the sum of _____ (\$ _____) for the payment whereof the Principal and the Surety or Sureties bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

WHEREAS, the Principal has, by means of a written agreement, dated _____ entered into a Contract with the Owner for **Huckleberry Lane Dog Park**, which agreement is by reference made a part hereof,

NOW THEREFORE, The conditions of this obligation are such that if the Principal shall faithfully perform the Contract on his part, and satisfy all claims and demands, incurred for the same, and shall fully indemnify and save harmless the Owner from all cost and damage which he may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good for any such default, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

PROVIDED, HOWEVER, that no suit, action or proceedings, by reason of any default whatever be brought on his bond after twelve months from the day on which the final payment under the Contract falls due.

PROVIDED, further, that the said Surety or Sureties, for value received hereby stipulate and agree that no change, extension of time, or addition to the terms of the Contract or to the work to be performed thereunder of the specifications thereof shall in any way effect their obligations on this bond, and they do hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the work, or to the specifications.

SIGNED, SEALED, AND DELIVERED this _____ day of _____.

(Individual Principals Sign Here)

Witnesses:

_____(SEAL)
_____(SEAL)
_____(SEAL)
_____(SEAL)

Attest:

(Corporate Principal Sign Here)

BY: _____

Attest:

(Surety Sign Here)

COUNTERSIGNED:

BY: _____

SECTION VIII

LABOR AND MATERIALS BOND

KNOW ALL MEN BY THESE PRESENTS, THAT WE _____ as Principal, and _____ as Surety, are held and firmly bound unto said Owner, hereinafter called the Obligee, in the penal sum of _____ Dollars (\$ _____) lawful money of the United States, for the payment of which sum and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has entered into a certain Contract with said Obligee, City of Spanish Fort, Alabama, dated _____ (hereinafter called the Contract) for **City of Spanish Fort, Huckleberry Lane Dog Park**, and the specifications for said work shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the said Principal and all subcontractors to whom any portion of the work in said Contract is sublet and all assignees of said Principal and of such subcontractors shall promptly make payments to all persons supplying him or them with labor, materials, or supplies for or in the prosecution of the work provided for in such Contract, or any amendment or extension of or addition to said Contract, and for the payment of reasonable attorney's fees incurred by the successful claimant or plaintiffs in suits or claims against the Contractor arising out of or in connection with the said Contract, then the above obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions and limitations.

- (a) Any person, firm or corporation that has furnished labor, materials, or supplies for or in the prosecution of the work provided for in said Contract shall have a direct right to action against the Principal and Surety on this bond, which right of action shall be asserted in a proceeding, instituted in the County in which the work provided for in said Contract is to be performed or in any County in which said Principal or Surety does business. Such right of action shall be asserted in a proceeding instituted in the name of the claimant or claimants for his or their use and benefit against the Principal and Surety or either of them (but not later than one (1) year after the final settlement of said Contract falls due) in which action such claim or claims shall be adjusted and judgment rendered thereon.
- (b) The Principal and Surety hereby designate and appoint _____, or his successor or representative as the agent of each of them to receive and accept services of process or other pleading issued, or filed in any proceeding instituted on this bond and hereby consent that such service shall be the same as personal service on the Principal and/or Surety.
- (c) The Surety shall not be liable hereunder for any damages or compensation recoverable under Workmen's Compensation or Employer's Liability Statute.
- (d) In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any suit, action or proceeding thereon that is instituted later than one year after the final settlement of said Contract.

(e) This bond is given pursuant to the terms of an Act of the Legislature of the State of Alabama approved February 8, 1935, entitled: "An Act to further provide for Bonds and Contractors on State and other public works and suits thereon".

(f) The full name and residence of each individual party to the bond must be inserted in the first paragraph.

(g) If the Principal is a partnership, the full name of all partners must be inserted in the first paragraph which must recite that they are the partners composing the partnership (to be named) and all partners must execute the bond as individuals.

(h) The State of Incorporation of each corporate party to bond must be inserted in the first paragraph and the bond must be executed under the Corporate Seal of each party attested by its secretary or other appropriate officer.

(i) The date of the bond must not be prior to the date of the Contract.

SIGNED, SEALED, AND DELIVERED this _____ day of _____.

(Individual Principals Sign Here)

Witnesses:

_____(SEAL)

_____(SEAL)

_____(SEAL)

_____(SEAL)

Attest:

(Corporate Principal Sign Here)

BY: _____

Attest:

(Surety Sign Here)

BY: _____

SECTION IX

CONTRACT FOR CONSTRUCTION

THIS CONTRACT, entered into this _____ day of _____, by **CITY OF SPANISH FORT, ALABAMA**, hereinafter called the Owner, Party of the First Part, and _____ a Corporation organized and existing under the laws of the State of _____, a Partnership consisting of _____ of the City of _____ in the State of _____, or _____, an individual, hereinafter called the Contractor, Party of the Second Part,

WITNESSETH: That the parties hereto do mutually agree as follows:

The Contractor shall furnish the labor, materials and perform the work for the construction of:

**City of Spanish Fort
Huckleberry Lane Dog Park**

and other work, complete in place with all appurtenances, for the consideration of the unit prices set forth in the Contractor's proposal (Estimated Base Total \$ _____) for the various items of work and in strict and entire conformity with the provisions of the Contract, the advertisement and proposal, the plans, general conditions, special provisions and supplemental specifications, and specifications prepared (or approved) and submitted by the Owner, copies of which are hereto attached, and which said plans and specifications and the advertisement and the proposal are hereby made a part of this contract as fully and to the same effect as if the same has been set forth at length in the body of this contract.

The work shall be commenced within ten (10) days of the date specified in a work order to be issued to the Contractor by the Owner, or its authorized representative, and shall be completed within Sixty (60) calendar days from and after the commencement date stipulated in said work order. It is mutually agreed between the parties hereto that time is the essence of this Contract, and in the event the construction of the Work is not completed within the time herein specified, it is agreed that from the compensation otherwise to be paid to the Contractor, the owner may retain as liquidated damages, and not as a penalty, \$550.00 for each calendar day beyond the required date of completion.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.

ATTEST:

CITY OF SPANISH FORT

Rebecca A. Gains, City Clerk

BY: _____
Michael M. McMillan, Mayor

Official Title

WITNESS:

BY: _____

Business Address

Telephone Number

Federal ID #

I, _____, certify that I am the _____ of the corporation named as Contractor herein; that _____, who signed this Contract on behalf of the Contractor, was then _____ of said corporation; and that said Contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporation by authority of its corporate powers.

(CORPORATE SEAL)

STATE OF ALABAMA

COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Michael M. McMillan whose name as Mayor of The City of Spanish Fort, Alabama, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of the within instrument, he, as such officer and with full authority executed the same voluntarily and as the act of said municipal corporation.

Given under my hand and Official Seal this the _____ day of _____

NOTARY PUBLIC

MY COMMISSION EXPIRES

STATE OF ALABAMA

COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that _____ whose name as _____, of _____, acknowledged before me on this day that, being informed of the contents of the within instrument he, in his capacity as such, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this _____ day of _____

NOTARY PUBLIC

MY COMMISSION EXPIRES

SECTION X

GENERAL CONDITIONS

1. CONTRACT AND CONTRACT DOCUMENTS:

The Plans, Specifications and Addenda, hereinafter enumerated in Paragraph 1 of the General Conditions shall form part of this Contract the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in the said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light on the interpretation of the provisions to which they refer.

Contents

1. Contract and Contract Documents
2. Additional Instructions and Detail Drawings
3. Shop Drawings
4. Materials, Services, and Facilities
5. Contractor's Title to Materials
6. Inspection and Testing of Materials
7. "Or Equal" Clause
8. Patents
9. Surveys, Permits and Regulations
10. Contractor's Obligations
11. Weather Conditions
12. Protection of Work and Property--Emergency
13. Reports, Records and Data
14. Supervision by Contractor
15. Changes in Work
16. Extras
17. Owner's Right to Perform Work
18. Time for Completion and Liquidated Damages
19. Correction of Work
20. Subsurface Conditions Found Different
21. Claims for Extra Cost
22. Right of Owner to Terminate Contract
23. Construction Schedule and Periodic Estimates
24. Payments to Contractor
25. Acceptance of Final Payment Constitutes Release
26. Payments by Contractor
27. Insurance
28. Contract Security
29. Additional or Substitute Bond
30. Assignments
31. Mutual Responsibility of Contractors
32. Separate Contract
33. Subcontracting
34. Engineer's Authority
35. Stated Allowances
36. Use of Premises and Removal of Debris
37. Lands and Rights-of-Way
38. General Guaranty
39. Conflicting Conditions

40. Notice and Service Thereof
41. Provisions Required by Law Deemed Inserted
42. Protection of Lives and Health
43. Other Prohibited Interests
44. Use and Occupancy Prior to Acceptance by Owner
45. Project Documentation
46. Suspension of Work
47. Underground Utilities and Services
48. Existing Utilities
49. Erosion Control
50. Plans and Specifications Furnished
51. Public Convenience
52. Equipment
53. Determination of Lines and Grades
54. Contract Close-Out

The following terms are used in this contract are respectively defined as follows:

- (a) "Contractor": A person, firm, or corporation with whom the contract is made by the Owner.
- (b) "Subcontractor": A person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with the Contractor.
- (c) "Work on at the project": Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any Subcontractor.

2. ADDITIONAL INSTRUCTION AND DETAIL DRAWINGS:

The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract. The additional drawings and instruction thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonable interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawing and instructions. The Contractor and the Engineer will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Engineer in accordance with said schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work. Each such schedule shall be subject to change from time to time in accordance with the progress of the work.

3. SHOP DRAWINGS:

The Contractor shall submit to the Engineer for review, five (5) copies of all Shop Drawings, plus the number of copies the Contractor wishes to have returned to him after the Engineer's review, collated according to the organization of the accepted schedule of Shop Drawings, which has written indication that the Contractor has satisfied their responsibilities under the Contract. All Shop Drawing submissions shall be identified on enclosure and show Project name and Project number. The information shown on the Shop Drawings will be complete with respect to all design criteria, materials, and similar data to enable the Engineer to review the information as required.

The Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data prior to submission to the Engineer for review.

The Contractor shall furnish five (5) complete sets of the corrected copies of Shop Drawings including parts list, operation and maintenance manuals, lubrication charts and descriptive literature for all equipment. Also, any manufacturer's drawings of special materials required for the job shall be submitted to the Engineer for review prior to installation.

4. MATERIALS, SERVICES AND FACILITIES:

- (a) It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete and deliver the work within the specified time.
- (b) Any work necessary to be performed after regular working hours, on Sundays or Legal Holidays, shall be performed without additional expense to the Owner.

5. CONTRACTOR'S TITLE TO MATERIALS:

No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims or encumbrances.

6. INSPECTION AND TESTING OF MATERIALS:

- (a) All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. The Owner will pay for all laboratory inspection service direct, and not as a part of the contract.
- (b) Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specification and suitability for uses intended.

7. "OR EQUAL" CLAUSE:

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturer's or vendor's names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any materials, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, as determined by the Engineer is of equal substance and function. It shall not be purchased or installed by the Contractor without the Engineer's written approval.

8. PATENTS:

- (a) The Contractor shall hold and save the Owner and its officer, agents, servants, and employees harmless for liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article or appliance manufactured

or used in the performance of the Contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.

- (b) License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, direct by the Owner and not by or through the Contractor.
- (c) If the Contractor uses any design, device or materials covered by letters, patent, or copyright, he shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device, or material. It is mutually agreed and understood, that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this Contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

9. SURVEYS, PERMITS, AND REGULATIONS:

Unless otherwise expressly provided for in the Specifications, the Owner will furnish to the Contractor centerline, clearing limits, and control points for project. The Contractor shall procure and pay all permits, licenses, and approval necessary for the execution of his Contract. Rules, orders, and regulations relating to performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

Construction staking will be provided for only one time. Additional survey work will be provided by Contractor with no additional cost to the Owner. Contractor will be provided coordinates for said project upon request.

10. CONTRACTOR'S OBLIGATIONS:

The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract, within the time herein specified, in accordance with the provisions of this contract and said specifications and in accordance with the plans and drawings covered by this Contract any and all supplemental plans and drawings, and in the progress of the work. He shall furnish, erect, maintain, and remove such construction plant and such temporary works as may be required.

The Contractor shall observe, comply with and be subject to all terms, conditions, requirements and limitations of the Contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Engineer and the Owner.

11. WEATHER CONDITIONS:

In the event of temporary suspension of work, or during inclement weather, or whenever the Engineer shall direct, the Contractor will, and will cause his subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If in the opinion of the Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors so to protect his work, such materials shall be removed and replaced at the expense of the Contractor.

12. PROTECTION OF WORK AND PROPERTY—EMERGENCY:

The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this Contract. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such is caused directly by errors contained in the Contract or by the Owner, or his duly authorized representatives.

In case of any emergency which threatens loss or injury of property, and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Engineer, in a diligent manner. He shall notify the Engineer immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Engineer for approval.

Where the Contractor has not taken action but has notified the Engineer of any emergency threatening injury to persons or damage to the work or any adjoining property, he shall act as instructed or authorized by the Engineer.

The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 15 of the General Conditions.

13. REPORTS, RECORDS, AND DATA:

The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the Owner may request concerning work performed or to be performed under this Contract.

14. SUPERVISION BY CONTRACTOR:

At the site of the work the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Engineer and shall be one who can be continued in that capacity for the particular job involved unless he ceases to be on the Contractor's payroll.

15. CHANGES IN WORK:

No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the Owner. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- (a) Unit bid prices previously approved.
- (b) An agreed lump sum.
- (c) The actual cost of:
 - 1. Labor, including foremen;
 - 2. Materials entering permanently into the work;
 - 3. The ownership or rental cost of construction plant and equipment during the time of use on the extra work;
 - 4. Power and consumable supplies for the operation of power equipment;
 - 5. Insurance; and
 - 6. Social Security and old age and unemployment contribution. To the cost under (c) there shall be added a fixed fee to be agreed upon but not to exceed fifteen (15%) percent of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

16. **EXTRAS:**

Without invalidating the contract, the Owner may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials, shall be allowed unless the work is ordered in writing by the Owner or its Engineer, acting officially for the Owner, and the price is stated in such order.

17. **OWNER'S RIGHT TO PERFORM WORK:**

It is understood that the Owner may delete any and/or all of the items listed above, and the Contractor agrees to construct the remaining items at the bid price for each item.

18. **TIME FOR COMPLETION AND LIQUIDATED DAMAGES:**

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in his contract shall be commenced on a date to be specified in the "Notice to Proceed".

The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part of his consideration for the awarding of this contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages, for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the work.

It is mutually agreed between the parties hereto that time is the essence of this Contract, and in the event the construction of the Work is not completed within the time herein specified, it is agreed that from the compensation otherwise to be paid to the Contractor, the Owner may retain as liquidated damages, the amount specified in Section 108 of the State of Alabama Standard Specifications for Highway Construction, for each calendar day beyond the required date of completion or \$500 dollars, whichever is greater.

It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner. Provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- (a) To any preference, priority or allocation order duly issued by the Government;

- (b) To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- (c) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

Provided, further, that the Contractor shall, within five (5) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

19. CORRECTION OF WORK:

All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet his approval, they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at his own expense. Rejected materials shall immediately be removed from the site. If in the opinion of the Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid the Contractor hereunder shall be reduced by such amount as in the judgment of the Engineer shall be equitable.

20. SUBSURFACE CONDITIONS FOUND DIFFERENT:

Should the Contractor encounter sub-surface and/or latent conditions at the site materially differing from those shown on the Plans or indicated in the Specifications, he shall immediately give notice to the Engineer of such conditions before they are disturbed. The Engineer will thereupon promptly investigate the conditions, and if he finds that they materially differ from those shown on the Plans or indicated in the Specifications, he will at once make such changes in the Plans and/or Specifications as he may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 15 of the General Conditions.

21. CLAIMS FOR EXTRA COST:

No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the Engineer approved by the Owner, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of subparagraph 15(c) of the General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the Owner, give the Owner access to accounts relating thereto.

22. RIGHT OF THE OWNER TO TERMINATE CONTRACT:

In the event that any of the provisions of this Contract are violated by the Contractor, or by any of his subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate the Contract, such notices to contain the reasons for such intention to terminate the Contract, and unless within three (3) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the Contract shall upon the expiration of said three (3) days, cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the Surety and the Contractor

and the Surety shall have the right to take over and perform the contract; Provided, however, that if the Surety does not commence performance thereof within five (5) days from the mailing to such Surety of notice of termination, the Owner may take over the work and prosecute the same to completion by Contract or by force account for the account and at the expense of the Contractor and the Contractor and his Surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor.

23. CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES:

Immediately after execution and delivery of the Contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will be come due the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms to be supplied by the Owner (a) detailed estimate giving a complete breakdown of the Contract price and (b) periodic itemized estimates of work done for the purpose of making partial payment thereon. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the Contract price.

24. PAYMENTS TO CONTRACTOR:

- (a) Not later than the 15th day of each calendar month, the Owner shall make a progress payment to the Contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under this Contract, but to insure the proper performance of this Contract, the Owner shall retain five (5%) percent of the amount of each estimate until final completion and acceptance of all work covered by this Contract: provided, that the Contractor shall submit his estimate not later than the first day of the month:
- (b) In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.
- (c) All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.
- (d) **Owner's Right to Withhold Certain Amounts and Make Application Thereof:** The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails so to do, then the Owner may, after having served written notice on the said Contractor, either pay unpaid bills, of which the Owner has written notice, direct or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the

Contractor or his Surety. In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner shall be considered as a payment made under the Contract by the Owner to the Contractor. The Owner shall not be liable to the Contractor for any such payments made in good faith.

25. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE:

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and other relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this contract or the Performance and Payment Bond.

26. PAYMENTS BY CONTRACTOR:

The Contractor shall pay (a) for all transportation and utility services not later than the 20th day of the calendar month following that in which services are rendered, (b) for all materials, tools, and other expendable equipment to the extent of ninety (90%) percent of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the project and the balance of the cost thereof, not later than the 30th day following the completion of that party of the work in or on which such materials, tools, and equipment are incorporated or used, and (c) to each of his subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his subcontractors to the extent of each subcontractor's interest therein.

27. INSURANCE:

The Contractor shall not commence work under this Contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved.

- (a) Compensation Insurance: The Contractor shall procure and shall maintain during the life of this Contract Workmen's Compensation Insurance as required by applicable State or territorial law for all of his employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.
- (b) Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall procure and shall maintain during the life of this Contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amounts specified in the Supplemental General Conditions.
- (c) Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall either (1) require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified

in the Supplemental General Conditions specified in subparagraph (b) hereof or, (2) insure the activities of his policy, specified in subparagraph (b) hereof.

- (d) **Scope of Insurance and Special Hazards:** The insurance required under subparagraphs (b) and (c) hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this Contract as enumerated in the Supplemental General Conditions.
- (e) **Builder's Risk Insurance (Fire and Extended Coverage):** Until the project is completed and accepted by the Owner, the Owner, or Contractor (at the Owner's option as indicated in the Supplemental General Conditions), is required to maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portion of the project for the benefit of the Owner, the Contractor, subcontractors as their interest may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage premiums during construction unless the Contractor is required to provide such insurance. However, this provision shall not release the Contractor from his obligation to complete, according to plans and specifications, the project covered by the Contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking.
- (f) **Proof of Carriage of Insurance:** The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered except after fifteen (15) days written notice has been received by the Owner."

28. CONTRACT SECURITY:

The Contractor shall furnish a performance bond in an amount at least equal to one hundred (100%) percent of the Contract prices as security for the faithful performance of this Contract and also a payment bond in an amount not less than one hundred (100%) percent of the Contract price or in a penal sum not less than that prescribed by State, territorial or local law, as security for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract. The performance bond and the payment bond may be in one or separate instruments in accordance with local law.

29. ADDITIONAL OR SUBSTITUTE BOND:

If at any time the Owner, for justifiable cause, shall be or become dissatisfied with any surety or sureties, and then upon the Performance or Payment Bonds, the Contractor shall within five (5) days after notice from the Owner so to do, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the Owner.

30. ASSIGNMENTS:

The Contractor shall not assign the whole or any part of this Contract or any moneys due or become due hereunder without written consent of the Owner. In case the Contractor assigns all or part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this Contract.

31. MUTUAL RESPONSIBILITY OF CONTRACTORS:

If, through acts of neglect or omissions on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractors will so settle. If such other Contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim.

32. SEPARATE CONTRACT:

The Contractor shall coordinate his operations with those of other Contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including his subcontractors, shall keep informed of the progress and the detail work of other Contractors and shall notify the Engineer immediately of lack of progress or defective workmanship on the part of other Contractors. Failure of a contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the work as being satisfactory for proper coordination with his own work.

33. SUBCONTRACTING:

- (a) The Contractor may utilize the services of specialty subcontractors only on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors. The amount of work performed by a subcontractor shall be limited to forty (40%) percent of the Contract price, unless authorized by the Owner and/or Engineer.
- (b) The Contractor shall not award any work to any subcontractor without prior written approval of the Owner, which approval will not be given until the Contractor submits to the Owner a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the Owner may require.
- (c) The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- (d) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract documents.
- (e) Nothing contained in this Contract shall create any contractual relation between any subcontractor and the Owner.

34. ENGINEER'S AUTHORITY:

The Engineer shall give all orders and directions contemplated under this Contract and specifications relative to the execution of the work. The Engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this Contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said Contract or specifications, the determination or decision of the Engineer's shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner or to any extent by such question.

The Engineer shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor under this Contract and other Contractors performing work for the Owner shall be adjusted and determined by the Engineer.

35. STATED ALLOWANCES:

The Contractor shall include in his proposal the cash allowances stated in the Supplemental General Conditions. The Contractor shall purchase the "Allowed Materials" as directed by the Owner on the basis of the lowest and best bid of at least three competitive bids. If the actual price for purchasing the "allowed Materials" is more or less than the "Cash Allowance", the Contract price shall be adjusted accordingly. The adjustment in Contract price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable sections of the Contract Specifications covering this work.

36. USE OF PREMISES AND REMOVAL OF DEBRIS:

The Contractor expressly undertakes at his own expense:

- (a) to take every precaution against injuries to persons or damage to property;
- (b) to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractors;
- (c) to place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work, materials, and shall manage and/or remove all debris caused by his operations to the end that, at all times, the site of the work shall present a neat, orderly and workmanlike appearance;
- (d) before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in a neat, orderly condition;
- (e) to effect all cutting, fitting or patching of his work required to make the same to conform to the plans and specifications and, except with the consent of the Engineer, not to cut or otherwise alter the work of any other Contractor.

37. LANDS AND RIGHTS-OF-WAY:

Prior to the start of construction, the Owner shall obtain all lands and rights-of-way necessary for the carrying out and completion of work to be performed under this Contract.

38. GENERAL GUARANTY:

Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the Owner, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of the work unless a longer period is specified. The Owner will give notice of observed defects with reasonable promptness.

39. CONFLICTING CONDITIONS:

Order of precedence of Sections of the Contract Documents shall be in descending order as follows: CONTRACT, GENERAL CONDITIONS, SPECIAL PROVISIONS, all other Sections. Any provision in any Section which may be in conflict or inconsistent with any provision in any Section of greater precedence shall be void to the extent of such conflict or inconsistency.

40. NOTICE AND SERVICE THEREOF:

Any notice to any Contractor from the Owner relative to any part of this contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail to the said Contractor at his last given address, or delivered in person to the said Contractor or his authorized representative on the work.

41. PROVISIONS REQUIRED BY LAW DEEMED INSERTED:

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

42. PROTECTION OF LIVES AND HEALTH:

"The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971. Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Contracting Authority may determine to be reasonably necessary."

43. OTHER PROHIBITED INTERESTS:

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply Contracts or any subcontract in

connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

44. USE AND OCCUPANCY PRIOR TO ACCEPTANCE BY OWNER:

The Contractor agrees to the use and occupancy of a portion or unit of the project before formal acceptance by the Owner, provided the Owner:

- (a) Secures written consent of the Contractor except in the event, in the opinion of the Engineer, the Contractor is chargeable with unwarranted delay in final cleanup of punch list items or other contract requirements.
- (b) Secures endorsement from the insurance-carrier and consent of the surety permitting occupancy of the building or use of the project during the remaining period of construction, or,
- (c) When the project consists of more than one building, and one of the buildings is occupied, secures permanent fire and extended coverage insurance, including a permit to complete construction. Consent of the surety must also be obtained.

45. PROJECT DOCUMENTATION:

(a) General: Prior to start of construction, the Project right-of-way or easement shall be documented by the use of photographs or videotapes. Pictures (photo or video), in color, shall be taken at 100 feet on centers and shall be taken along the centerline of the Project looking up station. At least one station marker shall be visible for identification purposes and station markers shall be set by the Contractor. During the course of the documentation, any features or items of interest or importance which may be encountered shall be photographed or videotaped. Prints or tapes shall be delivered to the Engineer within one week after they are made. The Contractor will not be paid any portion of a partial payment request until prints or tapes are delivered to the Engineer's office.

(b) Photographs: Clear, legible photographs shall be taken by a skilled technician using a wide angle lens. Each photograph shall be identified on the back with Project number, location, date and time of day that photograph was taken. One color print approximately 4" x 6" and the negative shall be delivered to the Engineer.

(c) Videotapes: The purpose of the videotape recordings shall be a supply of continuous visual and audio record of problem areas, items, and features found within any particular area. This videotape record may be supplemented with photographs to exactly identify and locate specific bad features or items.

The videotape recordings shall be capable of recording and reproducing a picture having not less than 500 lines of resolution. The videotape recorder shall be one on which both sound and video information can be recorded utilizing a VHS video cassette system. The videotape recording shall be made on magnetic tape which shall produce a visual image equal to or better than the quality of the picture on a television monitor. The replay of the recorder video information, when reviewed on a monitor/receiver, shall be free of electrical interference and shall produce clear, stable images. To ascertain that the equipment to be

used in this Work meets the stated minimum requirements, a videotape of a suitable test pattern will be required prior to initiation of Work. The audio portion of the composite signal shall be sufficiently free of electrical interference and background noise to provide an oral report that is clear and completely and easily discernible. The audio portion of the tape report shall be recorded by the operating technician on the audio-video tapes as they are being produced and shall include the location or identification of the section being viewed, the station-to-station direction of travel, the distance traveled on the specific run, and any problems encountered.

Videotape recordings shall be enclosed in a vinyl plastic container which shall clearly indicate the date the tape was taken and the designated section(s) of the Project contained on the tape.

There shall be no separate payment for photographic and/or videotape work.

46. SUSPENSION OF WORK:

Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay with such determination to be set forth in writing.

47. UNDERGROUND UTILITIES AND SERVICES:

The plans show certain features of the topography and certain underground utilities, but they do not propose to show in complete detail all such lines or obstructions. Such topography and notes on the plans were inserted from records available and are for the contractor's convenience, and shall not be used as a basis for claims or extra compensation.

Minor obstructions are not shown on the plans. Their presence, and the required removal and the resetting thereof, shall be considered incidental to the overall project, and the cost for the work noted above shall be included in the overall bid price for the project (no separate payment).

Mailboxes, signs and other minor obstructions are not shown on the plans. Their presence, and the required removal and the resetting thereof, shall be considered incidental to the overall project, and the cost for the work noted above shall be included in the overall bid price for the project (no separate payment).

48. EXISTING UTILITIES:

The existing utilities as shown on the plans are for the Contractor's benefit. These utilities have been plotted from the best available records. However, failure to show any utility on the construction plans does not justify additional payment to the Contractor if said utility is damaged. The Contractor must notify the utility companies involved prior to starting construction and shall make every effort not to damage any utilities. If utilities are damaged by the Contractor, the Contractor must pay all expenses incurred in the repair at no cost to the Owner or Engineer.

49. EROSION CONTROL:

Immediately prior to any clearing and grubbing or any excavation which could disturb the soils, the Contractor shall install the erosion control items in locations indicated on the construction plans.

The Contractor will be responsible for identifying and installing erosion control in areas where erosion may be encountered during construction of the project. The Contractor shall take all necessary precautions to insure that the construction of the project and the erosion/sediment from the project are adequately controlled and do not damage streams or adjacent property.

The erosion control items installed shall be maintained by the Contractor throughout the course of the project.

50. PLANS AND SPECIFICATIONS FURNISHED:

The Engineer shall provide the Contractor with three (3) sets of construction plans and specifications. Any additional plans and specifications required by the Contractor must be paid for by the Contractor.

51. PUBLIC CONVENIENCE:

No attempt is made to restrict work hours of the Contractor's operations, but he is reminded that it will be necessary to arrange his work schedule to provide the least inconvenience to the public and individual residents.

The Contractor shall take extra precaution to insure that traffic is protected by the use of, but not limited to, flashing signs and barrels.

No direct payment will be made for any of the work described in this section.

52. EQUIPMENT:

Choice of equipment for excavation or other project work shall be the responsibility of the Contractor, however, any equipment that results in waste of material, inaccurate work, or otherwise proves objectionable shall be replaced as directed by the Engineer at no additional cost to the Owner.

53. DETERMINATION OF LINES AND GRADES:

The Engineer will set one set of construction stakes for the Contractor establishing all lines and grades necessary for the proper prosecution of the work. The location, alignment and elevation of all parts of the work will be established by the Engineer, but the Contractor shall assume full responsibility for construction to alignment, grade, and dimensions indicated in the plans. These stakes shall constitute the field control by which the Contractor shall govern and execute his work.

54. CONTRACT CLOSE-OUT:

Subsequent to the final inspection of this project by the Engineer, the following requirements must be satisfied by the Contractor before final payment can be made.

- a. The Contractor must publicly advertise the NOTICE OF COMPLETION furnished by the Engineer a minimum of once a week for four consecutive weeks.
- b. The Contractor must execute copies of CONTRACTOR'S AFFIDAVIT OF PAYMENT OF CLAIMS AND DEBTS on the form furnished by the Engineer.
- c. The Contractor must have his surety execute copies of CONSENT OF SURETY TO FINAL PAYMENT on the form furnished by the Engineer.

- d. The Contractor must furnish a letter on his letterhead acknowledging that acceptance of final payment by the Contractor constitutes a waiver of all claims, present or future, in connection with this project as per Item 25 of this section.
- e. If any purchase items have been incorporated in the work, the Contractor must furnish a letter on his letterhead assigning those warranties to the OWNER. Copies of said warranties shall be bound in one binder and submitted along with the letter assignment.
- f. The Contractor must provide one complete set of "as built" covering all utility routing, structural, mechanical, and electrical aspects of the work, including wiring schematics.

RESOLUTION NO. 1431-2024

A RESOLUTION AWARDING A BID FOR THE DENISE LANE DRAINAGE MODIFICATIONS IN THE CITY OF SPANISH FORT

WHEREAS, the Mayor and City Council find that the lowest responsible and responsive bid submitted for the Denise Lane Drainage Modifications in the City of Spanish Fort was submitted by PL Russell, LLC; and

WHEREAS, the City Council desires to award the bid for the Denise Lane Drainage Modifications in the City of Spanish Fort to PL Russell, LLC, in accordance with its bid received on June 26, 2024.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

SECTION 1. The City Council awards the bid and contract to PL Russell, LLC, for the Denise Lane Drainage Modifications in the City of Spanish Fort in accordance with the bid dated June 26, 2024. A copy of the bid recommendation and bid tabulation is attached as Exhibit 1 hereto. A copy of the proposed contract is attached as Exhibit 2, subject to changes approved by the Mayor.

SECTION 2. If any part, section or subdivision of this Resolution shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Resolution which shall continue in full force and effect notwithstanding such holding.

ADOPTED and APPROVED this _____ day of _____, 2024.

Michael M. McMillan
Mayor

ATTEST:

Rebecca A. Gaines, CMC
City Clerk

MATTHEW JONES ENGINEERING, LLC

July 7, 2024

VIA EMAIL

Mr. Casey Rains
City Planner
City of Spanish Fort
7361 Spanish Fort Boulevard
Spanish Fort, AL 36527

RE: Denise Lane Drainage Modifications
Project Number 2024ARP-DL1

Dear Mr. Ledet,

Please find attached the Certified Bid Tabulation for the referenced project. I have reviewed the three (3) bids received June 26, 2024 that are listed on the bid tab. Two of the bids were determined to be responsive, while one, the low bid, was determined to be non-responsive.

In regard to the non-responsive bid from RH Deas, Ala. Code Section 39-2-5 (1975), as amended, states "[t]he contract shall be awarded to the lowest responsible and responsive bidder." Addendum 1 was issued prior to the bid date, which included an updated Bid Form with additional work line items and additional unit items. RH Deas did not acknowledge receipt of the addendum and did not submit the correct Bid Form for the project. As a result, the Bid Form and bid is incomplete and not responsive, as it did not include a bid for all items within the scope of work.

Additionally, in accordance with the Bid Documents and Section 00 45 19, the bidder is required to submit a non-collusion affidavit. RH Deas did not submit the non-collusion affidavit, and therefore, the bid was not responsive as it did not include all required documentation.

The prices for the bid from PL Russell, the 2nd low bid, were found to be reasonable for the work to be performed; the bid is less than the Engineer's Opinion of Probable Cost, but

reasonable for the work to be performed. Additionally, there are no indications of an unbalanced bid and all required documentation has been provided.

Therefore, it is my opinion that P.L. Russell LLC is the lowest responsive and responsible bidder with a bid of \$282,330.00, and as such, recommend they be awarded the contract for this amount.

If you have any questions, please do not hesitate to call.

Best regards,



S. Matthew Jones, P.E.

Cc: Mayor Michael McMillan
Rebecca A. Gaines
Casey Rains

Certified Bid Tabulation

Project Name: Denise Land Drainage Modifications
 Project Number: 2024ARP-DL1
 Engineer: Matthew Jones Engineering LLC
 Date Bids Received: 6/26/24 (2:00pm)

| Bidders Name | License Number | Total Base Bid | Signed Bid Form | Addendum 1 Acknowledgement | Bid Bond? | Non-Collusion Affidavit? |
|-------------------------------|----------------|----------------|-----------------|----------------------------|-----------|--------------------------|
| RH Deas Building Co., LLC | 57048 | **\$203,560.00 | Yes | No | Yes | No |
| P.L. Russell LLC | 57754 | \$282,330.00 | Yes | Yes | Yes | Yes |
| Chris Brewer Contracting, Inc | 40677 | \$324,263.00 | Yes | Yes | Yes | Yes |

** RH Deas bid was determined to be non-responsive due to lack of acknowledgement of Addendum 1 and failure to submit non-collusion affidavit.

Engineer's Opinion of Probable Cost: \$359,590.00



PROJECT MANUAL

Denise Lane Drainage Modifications

Project No. 2024ARP-DL1

prepared for

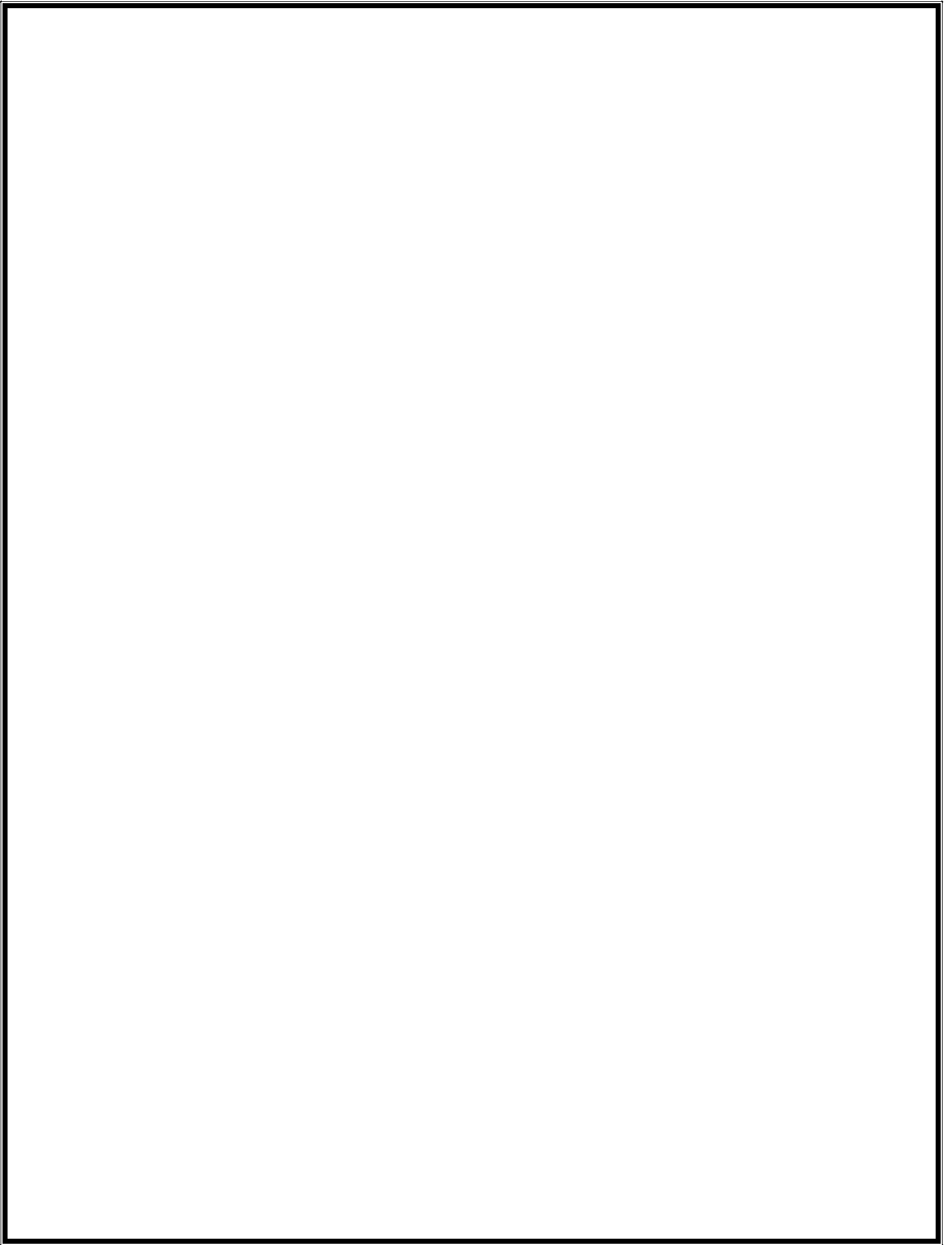
The City of Spanish Fort



prepared by

Matthew Jones Engineering, LLC

Bid Date: June 26, 2024 @ 2:00 PM





ADDENDUM 1
JUNE 22, 2024

TO: Pre-Bid Conference Attendees and City Staff
FROM: Matthew Jones Engineering, LLC
S. Matthew Jones, PE
RE: Denise Lane Drainage Modifications Project
Project No. 2024ARP-DL1

This addendum forms a part of and modifies the Construction Documents for the above project. Contractor shall confirm receipt of the addendum via email by close of business Monday, June 24, 2024, and additionally acknowledge receipt within the submitted bid package. Attendees of Mandatory Pre-Bid Meeting are also attached.

Incorporate into the Contract Documents the following additions, deletions, changes, clarifications, etc:

SPECIFICATIONS:

The following items were edited:

1. Bid Form
2. Demolition Plan - Additional trees are required to be removed.
3. Site Plan - Direct TV satellite Dish is required to be reset.
4. Drainage Plan - Drainage structure labels are updated.

REQUESTS FOR INFORMATION:

Question 1: What are the allowable working hours?

Response 1: Contractor is allowed to work Monday through Saturday, 7 am to 9 pm when the City noise ordinance. Is not in effect.

Question 2: Are there multiple species of sod within the project area?

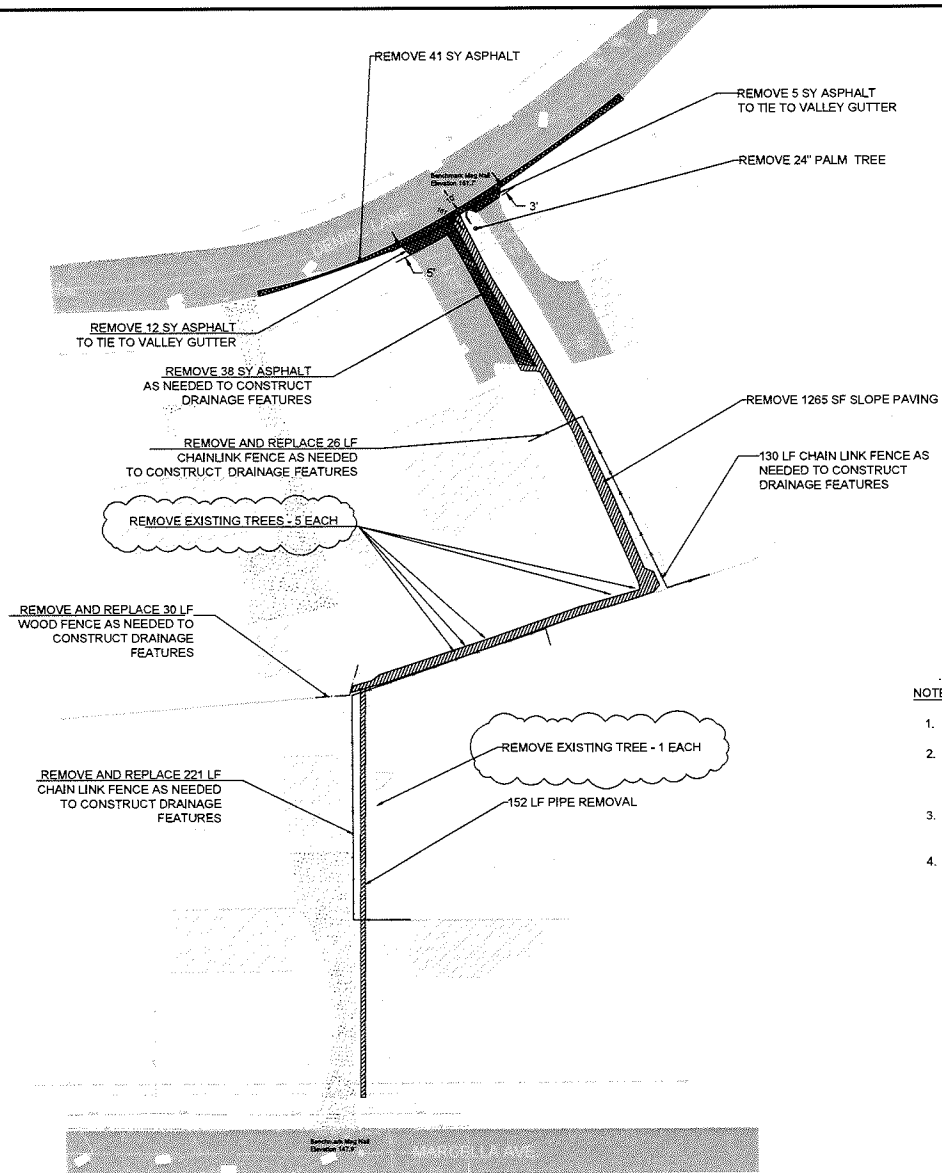
Response 2: Contractor should match the species of sod that are present. The specific species of sod are unknown.

Question 3: Is the contractor required to pay for temporary power pole relocation if it is necessary?

Response 3: Yes.

Question 4: Should the contractor bid a uniform chainlink fence height?

Response 4: Yes. Contractor should bid a 4' chainlink fence.



NOTES:

1. CONTRACTOR SHALL FIELD LOCATE ANY AND ALL EXISTING UTILITIES.
2. CONTRACTOR FULLY RESPONSIBLE FOR COORDINATION OF ANY TEMPORARY RELOCATION OF UTILITY INFRASTRUCTURE REQUIRED TO CONSTRUCT PROJECT.
3. ASPHALT PAVEMENT TO BE REMOVED BY SAWCUTTING FULL DEPTH STRAIGHT LINES.
4. CARE SHALL BE TAKEN TO PRESERVE ALL EXISTING TREES NOT LABELED TO BE REMOVED (SEE TREE ROOT PROTECTION DETAIL).

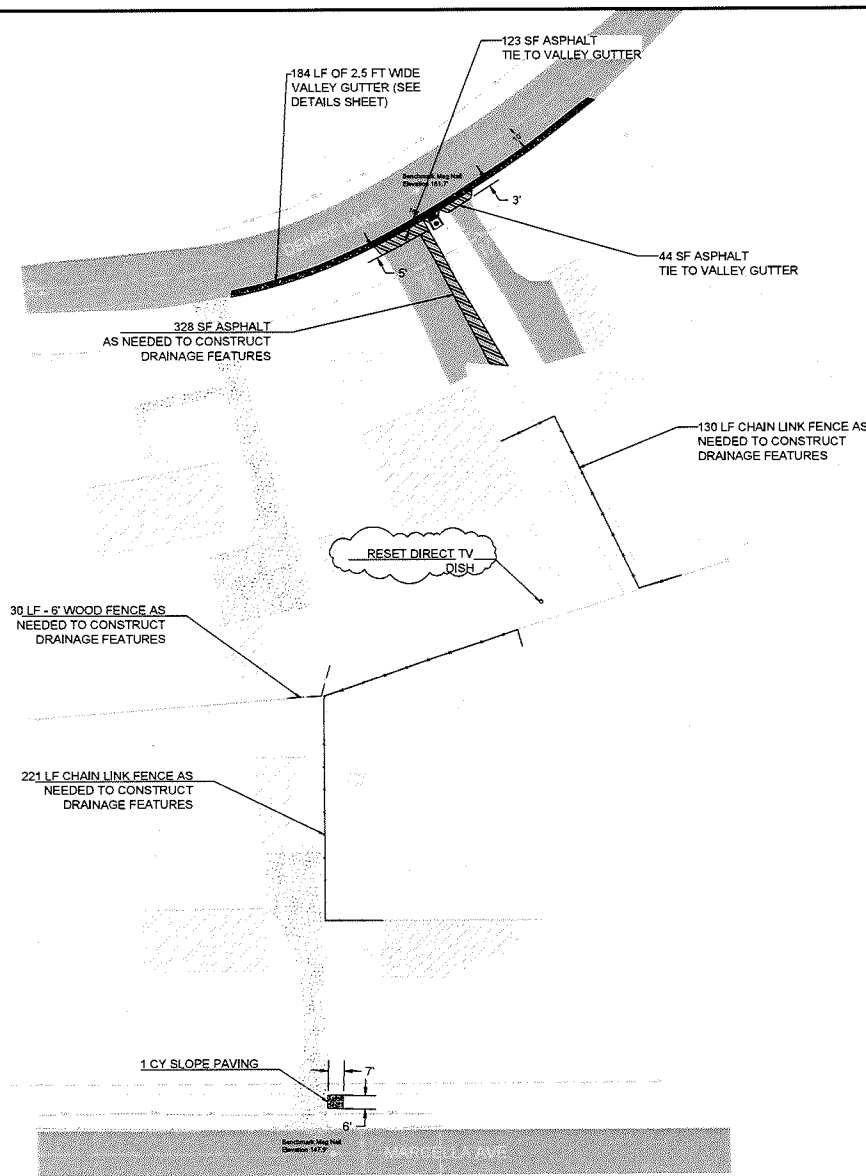


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| <p>CONSTRUCTION PLANS FOR DENISE LANE DRAINAGE MODIFICATIONS</p> <p>SPANISH FORT, ALABAMA</p> | |
| <p>DATE: 11/25/2017 DRAWN BY: J. WOOD CHECKED BY: J. WOOD</p> | <p>DATE: 11/25/2017 DRAWN BY: J. WOOD CHECKED BY: J. WOOD</p> |
| <p>SCALE: 1"=25'</p> | |
| <p>DEMOLITION PLAN</p> | |
| <p>DRAWING NO. C101</p> | |

MATTHEW JONES ENGINEERING, LLC
 9427 WIND CLAM TRAIL
 DAPHNE, AL 36626
 S.MATTHEWJONES@GICLOUD.COM
 (251) 259-0444



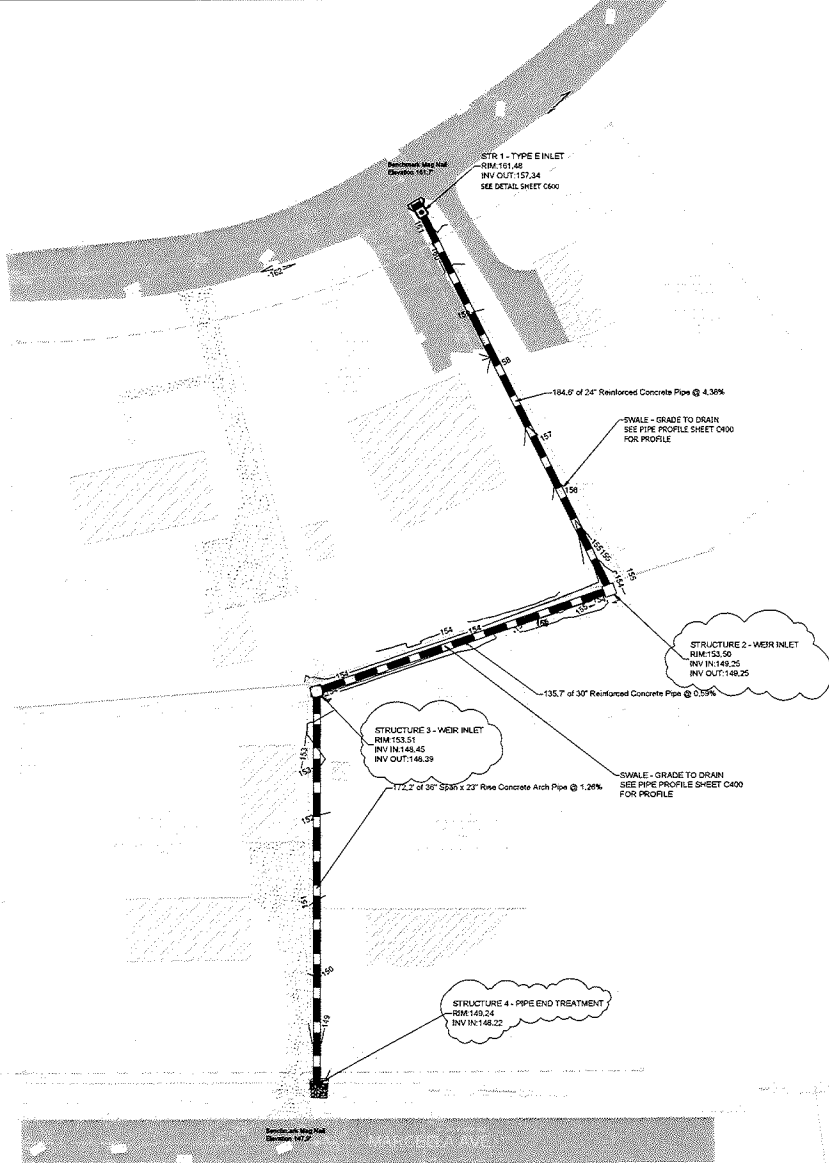
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|--------|------------------|---------|--------------------|
| NO. 1 | ASPHALT | 12 SY | REMOVE |
| NO. 2 | ASPHALT | 41 SY | REMOVE |
| NO. 3 | ASPHALT | 5 SY | REMOVE |
| NO. 4 | ASPHALT | 24 SY | REMOVE |
| NO. 5 | ASPHALT | 38 SY | REMOVE |
| NO. 6 | ASPHALT | 1265 SF | REMOVE |
| NO. 7 | CHAIN LINK FENCE | 26 LF | REMOVE AND REPLACE |
| NO. 8 | CHAIN LINK FENCE | 130 LF | REMOVE |
| NO. 9 | CHAIN LINK FENCE | 221 LF | REMOVE AND REPLACE |
| NO. 10 | WOOD FENCE | 30 LF | REMOVE AND REPLACE |
| NO. 11 | TREES | 5 EACH | REMOVE |
| NO. 12 | TREES | 1 EACH | REMOVE |
| NO. 13 | PIPE | 152 LF | REMOVE |



NOTES:

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4. CARE SHALL BE TAKEN TO PRESERVE ALL EXISTING TREES NOT LABELED TO BE REMOVED (SEE TREE ROOT PROTECTION DETAIL).
5. ALL EXISTING FEATURES THAT ARE REMOVED TO FACILITATE CONSTRUCTION SHALL BE REPLACED IN-KIND WITH NEW MATERIALS.
6. ALL DISTURBED AREAS BEHIND CONSTRUCTED VALLEY GUTTER SHALL BE GRADED AND SODDED. A MINIMUM 2 FT WIDE STRIP OF SOD OF THE SAME SPECIES AS EXISTING SHALL BE PLACED ALONG THE LENGTH OF VALLEY GUTTER.
7. ALL DISTURBED AREAS WITHIN THE CONSTRUCTION LIMITS SHALL BE RESODDED WITH SAME EXISTING SPECIES OF SOD.
8. CONTRACTOR SHALL RESET ANY AND ALL PROPERTY CORNERS DISTURBED BY CONSTRUCTION.

| MATTHEW JONES ENGINEERING, LLC 9427 WIND CLAN TRAIL DAPHNE, AL 36526 S.MATTHEW@MJEAL.COM (251) 285-8844 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| CONSTRUCTION PLANS FOR DENISE LANE DRAINAGE MODIFICATIONS SPANISH FORT, ALABAMA | <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>DATE</th> <th>BY</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> | DATE | BY | DESCRIPTION | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| <p>SCALE: 1"=25'</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| SITE PLAN | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| DRAWING NO. C200 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |



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|--|------------------------------------|
| <p>MATTHEW JONES ENGINEERING, LLC 9427 WIND CLAN TRAIL DAPHNE, AL 36628 S.MATTHEWJONES@GMAIL.COM (251) 208-0044</p> | |
| | <p>SCALE: 1"=20'</p> |
| <p>CONSTRUCTION PLANS FOR DENISE LANE DRAINAGE MODIFICATIONS</p> | <p>SPANISH FORT, ALABAMA</p> |
| <p>GRADING AND DRAINAGE PLAN</p> | <p>DRAWING NO. C300</p> |

Denise Lane Drainage Modifications
Mandatory Pre-Bid Sign-In Sheet
June 19 2024

| Name | Company | Phone | Email |
|-----------------|---------------------------------|----------------------------|---|
| MATTHEW JONES | C.O. SF | 251-209-4044 | S.matthewjones@icloud.com |
| LIZ HENDERSON | SOUTHEASTERN SEALCOATING INC | (205) 601-1039 | liz@southeasternsealcoating.com |
| Blake Hanson | RH Deas Building Co. | 251-605-6890 | blake@rhdeasbuildingco.com |
| Matt LeBlanc | Harris Contracting Services | 407-688-4411 (251) 370- | christina@harriscontracting services.com |
| CHRIS BREWER | CHRIS BREWER CONTRACTING | 4600 | chris@CHRISBREWERCONTRACTING.COM |
| Scott Appleton | PL Russell | 251 487-6999 | Scott@PLRussell.com |
| Carson Tompkins | PL Russell | 251-421-6103 | bids@plrussell.com |
| Casey Rains | COSF | 251-422-1590 | crains@cityofspanishfort.com |

BID FORM

| Item | Description | Unit | Quantity | Unit Cost | Total Item Cost |
|--|--|-----------|----------|-----------|-------------------|
| 206D000 | Removing Pipe | LS | 1 | 4,200.00 | 4,200.00 |
| 206E001 | Removing Inlets | LS | 1 | 1,100.00 | 1,100.00 |
| 206X000 | Removing Asphalt | LS | 1 | 2,100.00 | 2,100.00 |
| 206C002 | Removing Concrete Slope Paving | LS | 1 | 6,000.00 | 6,000.00 |
| 206D011 | Removing Fence | LS | 1 | 6,000.00 | 6,000.00 |
| 206E062 | Removing Tree | LS | 1 | 15,000.00 | 15,000.00 |
| 210A000 | Structure Excavation | LS | 1 | 8,000.00 | 8,000.00 |
| 201E000 | Borrow Excavation (Underwater Backfill) (Sand) | CUYD | 225 | 24.00 | 5,400.00 |
| 210F002 | Borrow Excavation (Underwater Backfill) (ALDOT #57) | TON | 150 | 70.00 | 10,500.00 |
| 424A363 | Superpave Bituminous Concrete Wearing Surface Layer, Patching, 1/2" Maximum Aggregate Size Mix | LS | 1 | 3,400.00 | 3,400.00 |
| 530B003 | 36" Span, 23" Rise Roadway Pipe (Class 3 R.C.) | LS | 1 | 30,000.00 | 30,000.00 |
| 533A099 | 24" Storm Sewer Pipe (Class 3 R.C.) | LS | 1 | 20,000.00 | 20,000.00 |
| 533A100 | 30" Storm Sewer Pipe (Class 3 R.C.) | LS | 1 | 22,000.00 | 22,000.00 |
| 600A000 | Mobilization | LS | 1 | 43,000.00 | 43,000.00 |
| 614A000 | Slope Paving | LS | 1 | 2,300.00 | 2,300.00 |
| 619A003 | 30" Roadway Pipe End Treatment, Class 1 | LS | 1 | 2,200.00 | 2,200.00 |
| 621C008 | Inlets, Type E | LS | 1 | 10,000.00 | 10,000.00 |
| 623A001 | Concrete Gutter (Valley) | LS | 1 | 8,300.00 | 8,300.00 |
| 621X00 | Weir Inlet | LS | 1 | 10,000.00 | 10,000.00 |
| 634X001 | 4' Chain Link Fence | LF | 397 | 20.00 | 7,940.00 |
| 634X002 | 6' Wood Privacy Fence | LF | 30 | 63.00 | 1,890.00 |
| 654A000 | Solid Sodding | LS | 1 | 12,000.00 | 12,000.00 |
| 999A000 | Construction Material Testing (\$5000 Min. Bid) | LS | 1 | 5,000.00 | 5,000.00 |
| 999B000 | Erosion Control | LS | 1 | 8,500.00 | 8,500.00 |
| 999C000 | Utility Coordination (Power and Direct TV) | LS | 1 | 2,500.00 | 2,500.00 |
| SUBTOTAL | | | | | 247,330.00 |
| 999D000 | Construction Allowance | Allowance | -- | -- | \$35,000.00 |
| SUBTOTAL + CONSTRUCTION ALLOWANCE = TOTAL BID | | | | | 282,330.00 |



SECTION 00 01 10

TABLE OF CONTENTS

| | |
|----------|---------------------------------------|
| 00 11 13 | Advertisement for Bids |
| 00 21 13 | Instructions to Bidders |
| 00 22 13 | Supplementary Instructions to Bidders |
| 00 41 00 | Bid Form |
| 00 43 13 | Bid Security Form |
| 00 45 19 | Non-Collusion Affidavit |
| 00 51 00 | Notice of Award |
| 00 52 00 | Agreement |
| 00 55 00 | Notice to Proceed |
| 00 61 13 | Performance Bond |
| 00 61 15 | Payment Bond |
| 00 65 16 | Certificate of Substantial Completion |
| 00 72 00 | General Conditions |
| 00 73 00 | Supplementary Conditions |
| 00 94 63 | Change Order |

Technical Specifications

| | |
|----------|--|
| 01 00 00 | General Requirements |
| 01 32 33 | Photographic Documentation |
| 01 11 00 | Summary |
| 01 31 00 | Project Management and Coordination |
| 01 32 00 | Construction Progress Documentation |
| 01 40 00 | Quality Requirements |
| 01 74 19 | Construction Waste Management and Disposal |
| 01 78 39 | Project Record Documents |

- Spanish Fort Subdivision Regulations (incorporated by reference)
- Alabama Department of Transportation Standard Specifications for Highway Construction (incorporated by reference)

END OF SECTION

City of Spanish Fort
Denise Lane Drainage Improvements
Project Number 2024ARP-DL1

Sealed bids for the construction of the Denise Lane Drainage Improvements, project number 2024ARP-DL1 will be received by the City of Spanish Fort at Spanish Fort Community Center, 7361 Spanish Fort Boulevard, Spanish Fort, AL until 2:00 PM on Thursday June 26, 2024, and then publicly opened for furnishing all materials, labor, equipment, and performing all work required by the City of Spanish Fort and described as follows:

Removal of existing drainage system consisting of concrete flume, inlet, and corrugated metal pipe. Construction of new drainage system consisting of three (3) inlets, 495 linear feet of concrete pipe, and concrete gutter.

Sixty (60) working days are allowed for the construction of the project.

All bids must be on blank forms provided in the specifications and submitted in its entirety. A cashier's check drawn on an Alabama bank or a bidder's bond, payable to City of Spanish Fort, for an amount not less than five percent (5%) of the amount bid, but in no event more than ten thousand dollars (\$10,000.00), shall be filed with the bid, as a bid guaranty. The bidder's bond shall be prepared on the form specified and issued by a surety company authorized to do business in the State of Alabama.

A performance bond in the form and terms approved by the City in an amount not less than the contract price will be required at the signing of the contract. A labor and materials bond in the form and terms approved by the City in an amount not less than the contract price, insuring payment for all labor and materials, shall also be required at the signing of the contract. In addition, the contractor must furnish to the City at the time of the signing of the contract a certificate of insurance coverage as provided in the specifications. The right is reserved to reject any and/or all bids and to waive informalities and to furnish any item of material or work to change the amount of said contract.

Each Bidder is required to submit a "Bid Security", "Bid Form", Non-Collusion Affidavit", and any other items as outlined in Section 00 22 13 "Supplementary Instructions to Bidders."

Liquidated damages for non-completion of the work within the time limit agreed upon will be assessed in accordance with the terms of the contract.

Contract documents may be obtained in electronic PDF format at no cost to the bidder by emailing a request to the engineer, S. Matthew Jones, PE at SpanishFortBids@gmail.com. Hardcopies of the contract documents may be obtained upon request and upon deposit of \$150 to the engineer. This deposit shall be refunded in full upon return of the documents in reusable condition within ten (10) days after bid opening. The cost of and return of additional sets of specifications shall be in accord with Section 39-2-3(b), Code of Alabama (1975). No Specifications will be issued later than twenty-four (24) hours prior to the time indicated above for receiving bids.

It is the Bidder's responsibility to ensure they have all bidding documents and addendums. For any technical questions, contact the engineer at the provided email address.

A **mandatory** pre-bid conference will be held on **Thursday, June 19, 2024 at 4:30 P.M.** at City of Spanish Fort, 7361 Spanish Fort Boulevard, Spanish Fort, AL3652. All prospective bidders shall have a representative present at the pre-bid conference. No bids will be considered unless the bidder, whether resident or nonresident of Alabama, is properly licensed and qualified to perform the work described herein in accordance with all applicable laws of the State of Alabama. This shall include evidence of holding a current certificate to engage in general contracting in the State of Alabama, issued by the State of Alabama Licensing Board for General Contractors, Montgomery, Alabama, as required by Section 34-8-2, Code of Alabama (1975).

Any contractor that desires to bid as a prime contractor must have at least one of the following major classifications of license per Section 230-X-1-.27 of the State of Alabama Licensing Board for General Contractors Administrative Code: Highway and Streets or Heavy and Railroad Construction; or MU-(S) Specialty Construction: Drainage and Culvert.

Out of state corporations shall furnish a certificate of authority to transact business in Alabama. Out of state limited liability companies shall provide proof of registration to transact business in this state.

Prior to the award of a competitively bid contract to a contractor having one or more employees in the State of Alabama, Alabama law requires that the contractor provide the City proof of enrollment in E-Verify (see www.uscis.gov/everify).

All Bidders must be registered in www.SAM.gov for the purposes of confirming suspension status. The City of Spanish Fort will verify that the contractor or its principles, does not appear on the federal government's Federal Excluded Parties List prior to executing an agreement of contract with the entity.

Minority and women's business enterprises are solicited to bid on this contract as prime contractors and are encouraged to make inquiries regarding potential subcontracting opportunities and equipment, material and/or supply needs.

All bidders must make positive efforts to use small and minority owned business and women business enterprises in full compliance with 2 CFR 200.321, and provide documentation of efforts to the City of Spanish Fort prior to award of a contract.

All applicable sections of 2CFR 200, Appendix B apply to this project.

No bid shall be withdrawn for a period of sixty (60) days after the opening of bids without the consent of the City of Spanish Fort.

END OF SECTION

INSTRUCTIONS TO BIDDERS

TABLE OF CONTENTS

| | Page |
|--|------|
| Article 1 – Defined Terms..... | 2 |
| Article 2 – Copies of Bidding Documents | 2 |
| Article 3 – Qualifications of Bidders | 2 |
| Article 4 – Examination of Bidding Documents, Other Related Data, and Site | 3 |
| Article 5 – Mandatory Pre-Bid Conference | 5 |
| Article 6 – Site and Other Areas | 6 |
| Article 7 – Interpretations and Addenda..... | 6 |
| Article 8 – Bid Security | 6 |
| Article 9 – Contract Times | 6 |
| Article 10 – Liquidated Damages..... | 7 |
| Article 11 – Substitute and “Or-Equal” Items..... | 7 |
| Article 12 – Subcontractors, Suppliers and Others..... | 7 |
| Article 13 – Preparation of Bid | 7 |
| Article 14 – Basis of Bid; Comparison of Bids | 8 |
| Article 15 – Submittal of Bid..... | 8 |
| Article 16 – Modification and Withdrawal of Bid | 9 |
| Article 17 – Opening of Bids | 9 |
| Article 18 – Bids to Remain Subject to Acceptance..... | 9 |
| Article 19 – Evaluation of Bids and Award of Contract | 9 |
| Article 20 – Contract Security and Insurance | 10 |
| Article 21 – Signing of Agreement..... | 10 |

ARTICLE 1 – DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. City of Spanish Fort – The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered, otherwise known as issuing office.
 - B. Business Day(s) – 24 hours measured from midnight to next midnight excluding weekend and State of Alabama observed holidays.
 - C. Calendar Day(s) – 24 hours measured from midnight to next midnight including weekend and State of Alabama observed holidays.
 - D. Site – The site is the area within the limits of construction as detailed in the plans. Generally the site is located between 221 and 223 Denise Lane; 261, 263, and 265 Marcella Avenue.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the advertisement or invitation to bid may be obtained from the Issuing Office.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 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 authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.01 Contractor shall be registered in sam.gov, and shall provide their DUNS for verification of their registration status.

ARTICLE 4 – EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.01 Subsurface and Physical Conditions, if applicable in Section 00 31 00

- A. The Supplementary Conditions identify:
 - 1. Those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site.
 - 2. Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. Copies of reports and drawings referenced in Paragraph 4.01.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions has been identified and established in Paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion

Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

- C. Information and data shown or indicated in the Bidding 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, including Owner, or others.

4.02 *Hazardous Environmental Condition, if applicable in Section 00 31 00*

- A. The Supplementary Conditions identify any reports and drawings known to Owner relating to a Hazardous Environmental Condition identified at the Site.
- B. Copies of reports and drawings referenced in Paragraph 4.03.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.06 of the General Conditions has been identified and established in Paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.03 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 4.06 of the General Conditions.

4.04 On request and subsequent approval of Owner and Property Owner, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates. Bidder to provide a description of tests, etc. prior to approval.

4.05 If a reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. 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 other work.

- A. Paragraph 6.13.C of the General Conditions indicates that if an Owner safety program exists, it will be noted in the Supplementary Conditions.

4.06 It is the responsibility of each Bidder before submitting a Bid to:

- A. examine and carefully study the Bidding Documents, and the other related data identified in the Bidding Documents;

- B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
 - C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;
if provided in Section 00 31 00, Available Project Information carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in Paragraph 4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in the Paragraph 4.06 of the Supplementary Conditions as containing reliable "technical data";
 - D. consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs;
 - E. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
 - F. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
 - G. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
 - H. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.07 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 Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 – MANDATORY PRE-BID CONFERENCE

- 5.01 There will be a mandatory "Pre-Bid" meeting on **Thursday, June 19, 2024 at 4:30 P.M.** located

onsite at Denise Lane, Spanish Fort, AL. All contractors submitting a Bid **are required** to attend. 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.

ARTICLE 6 – SITE AND OTHER AREAS

6.01 The Site is located between 221 and 223 Denise Lane, and runs between 261 and 263 Marcella Avenue as indicated in the Construction Drawings. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. Temporary Construction Easements are also to be obtained and paid for by the Owner. However, all additional lands and access thereto required for construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing via Email Communication to Casey Rains, crains@cityofspanishfort.com and the engineer, S. Matthew Jones, P.E. at S.MatthewJones@icloud.com. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda emailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than five business days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer. No Addenda shall be issued later than three business days prior to the date fixed for opening the Bids. Failure of any Bidder to receive any such Addendum shall not relieve the Bidder from any obligation under his Bid submitted. All Addenda so issued shall become a part of the Contract.

ARTICLE 8 – BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5% of Bidder's maximum Bid price (but not more than \$10,000) and in the form of a certified check, bank money order, or a Bid bond (on the form attached) issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions.
- 8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 business days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven calendar days after the Effective Date of the Agreement or 61 calendar days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.
- 8.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of

receiving the award will be returned within seven calendar days after the Bid opening.

ARTICLE 9 – CONTRACT TIMES

9.01 The number of working days within which the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

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

ARTICLE 11 – SUBSTITUTE AND “OR-EQUAL” ITEMS

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or those substitute or “or-equal” materials and equipment approved by Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed substitute or “or-equal” item. No item of material or equipment will be considered by Engineer as a substitute or “or-equal” unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 calendar days prior to the date for receipt of Bids. Each such request shall conform to the requirements of Paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Engineer’s decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS AND OTHERS

12.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five business days after Bid opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities 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, individual, or entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, in which case apparent Successful Bidder shall submit an acceptable substitute, Bidder’s Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.

12.02 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.

ARTICLE 13 – PREPARATION OF BID

13.01 The Bid Form is included with the Bidding Documents.

13.02 All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each [section, Bid item, alternative, adjustment unit price item, and unit price item]

listed therein. In the case of optional alternatives the words "No Bid," "No Change," or "Not Applicable" may be entered.

- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.06 A Bid by an individual shall show the Bidder's name and official address.
- 13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.08 All names shall be printed in ink below the signatures.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.10 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

ARTICLE 14 – BASIS OF BID; COMPARISON OF BIDS

14.01 Unit Price

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.
- B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.
- C. 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.

14.02 Allowances

- A. For cash allowances the Bid price shall include such amounts as the Owner deems proper for Contractor's overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 11.02.B of the General Conditions.

ARTICLE 15 – SUBMITTAL OF BID

- 15.01 With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form, and, if required, the Bid Bond Form. Or, if Bidding Documents are all electronic, it

will be the Contractor's responsibility to print from online resource. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the following documents:

A. See Section 00 22 13 for a list of documents required to be submitted with the Bid.

A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to City of Spanish Fort, 7361 Spanish Fort Boulevard, Spanish Fort, AL 36527.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 16.02 If within 24 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 returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 – OPENING OF BIDS

- 17.01 Bids will be opened publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders within 10 business days after the opening of Bids.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also 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. 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.
- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

- 19.03 In evaluating Bids, Owner will consider whether or not the Bids comply 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.
- 19.04 Section intentionally omitted.
- 19.05 Section intentionally omitted.
- 19.06 If the Contract is to be awarded, Owner will award the Contract to the lowest responsive, responsible Bidder.

ARTICLE 20 – CONTRACT SECURITY AND INSURANCE

- 20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner’s requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bonds.

ARTICLE 21 – SIGNING OF AGREEMENT

- 21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement along with the other Contract Documents which are identified in the Agreement as attached thereto. Within 15 business days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within ten business days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

END OF SECTION

SECTION 00 22 13

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS

With each copy of the Project Manual, the Bidder shall print one separate unbound copy of the Bidding Documents. The unbound copy of the Bidding Documents is to be completed and submitted, which includes the following documents:

1. Bid Form – Section 00 41 00
2. Bid Security – Section 00 43 13
3. Non-Collusion Affidavit – Section 00 45 19

Place all of the above in a sealed envelope clearly marked as follows:

BID PROPOSAL FOR

Denise Lane Drainage Modifications

NOTE: The envelope should bear on the outside the **NAME** and **ADDRESS** of the **QUALIFIED BIDDER**, **Alabama Contractors License Number**, and **Contractor DUNS Number**.

If mailed, this envelope should be placed inside the mailing envelope.

Bids will be opened publicly at June 26, 2024 @ 2:00 PM at Spanish Fort Community Center, 7361 Spanish Fort Boulevard, Spanish Fort, AL 36527.

END OF SECTION

TABLE OF CONTENTS

| | Page |
|---|-------------|
| Article 1 – Bid Recipient | 2 |
| Article 2 – Bidder’s Acknowledgements | 2 |
| Article 3 – Bidder’s Representations | 3 |
| Article 4 – Bidder’s Certification | 4 |
| Article 5 – Basis of Bid | 4 |
| Article 6 – Time of Completion | 5 |
| Article 7 – Attachments to This Bid | 5 |
| Article 8 – Defined Terms | 5 |
| Article 9 – Bid Submittal | 5 |

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to: City of Spanish Fort
7361 Spanish Fort Boulevard
Spanish Fort, AL 36527

This Bid is submitted from:

PL RUSSELL LLC

251 SAINT ANTHONY ST

MOBILE, AL 36603

(Name and Address of Individual, Partnership, or Corporation)

57754

Alabama Contractor License No.

This Bid is for: Denise Lane Drainage Modifications
June 20, 2024 @ 2:00 PM

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 calendar days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

| <u>Addendum No.</u> | <u>Addendum Date</u> |
|---------------------|----------------------|
| <u>1</u> | <u>6/22/21</u> |
| <u> </u> | <u> </u> |
| <u> </u> | <u> </u> |

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work (if applicable).
- C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all (if applicable): (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in SC-4.02 as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in SC-4.06 as containing reliable "technical data."
- E. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site (if applicable); information and observations obtained from visits to the Site (if applicable); the Bidding Documents; and the Site-related reports (if applicable) and drawings identified in the Bidding Documents (if applicable), with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder’s safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

- G. Bidder 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 Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

ARTICLE 4 – BIDDER’S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

- 5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

BID FORM

| Item | Description | Unit | Quantity | Unit Cost | Total Item Cost |
|--|--|-----------|----------|-----------|-------------------|
| 206D000 | Removing Pipe | LS | 1 | 4,200.00 | 4,200.00 |
| 206E001 | Removing Inlets | LS | 1 | 1,100.00 | 1,100.00 |
| 206X000 | Removing Asphalt | LS | 1 | 2,100.00 | 2,100.00 |
| 206C002 | Removing Concrete Slope Paving | LS | 1 | 6,000.00 | 6,000.00 |
| 206D011 | Removing Fence | LS | 1 | 6,000.00 | 6,000.00 |
| 206E062 | Removing Tree | LS | 1 | 15,000.00 | 15,000.00 |
| 210A000 | Structure Excavation | LS | 1 | 8,000.00 | 8,000.00 |
| 201E000 | Borrow Excavation (Underwater Backfill) (Sand) | CUYD | 225 | 24.00 | 5,400.00 |
| 210F002 | Borrow Excavation (Underwater Backfill) (ALDOT #57) | TON | 150 | 70.00 | 10,500.00 |
| 424A363 | Superpave Bituminous Concrete Wearing Surface Layer, Patching, 1/2" Maximum Aggregate Size Mix | LS | 1 | 3,400.00 | 3,400.00 |
| 530B003 | 36" Span, 23" Rise Roadway Pipe (Class 3 R.C.) | LS | 1 | 30,000.00 | 30,000.00 |
| 533A099 | 24" Storm Sewer Pipe (Class 3 R.C.) | LS | 1 | 20,000.00 | 20,000.00 |
| 533A100 | 30" Storm Sewer Pipe (Class 3 R.C.) | LS | 1 | 22,000.00 | 22,000.00 |
| 600A000 | Mobilization | LS | 1 | 43,000.00 | 43,000.00 |
| 614A000 | Slope Paving | LS | 1 | 2,300.00 | 2,300.00 |
| 619A003 | 30" Roadway Pipe End Treatment, Class 1 | LS | 1 | 2,200.00 | 2,200.00 |
| 621C008 | Inlets, Type E | LS | 1 | 10,000.00 | 10,000.00 |
| 623A001 | Concrete Gutter (Valley) | LS | 1 | 8,300.00 | 8,300.00 |
| 621X00 | Weir Inlet | LS | 1 | 10,000.00 | 10,000.00 |
| 634X001 | 4' Chain Link Fence | LF | 397 | 20.00 | 7,940.00 |
| 634X002 | 6' Wood Privacy Fence | LF | 30 | 63.00 | 1,890.00 |
| 654A000 | Solid Sodding | LS | 1 | 12,000.00 | 12,000.00 |
| 999A000 | Construction Material Testing (\$5000 Min. Bid) | LS | 1 | 5,000.00 | 5,000.00 |
| 999B000 | Erosion Control | LS | 1 | 8,500.00 | 8,500.00 |
| 999C000 | Utility Coordination (Power and Direct TV) | LS | 1 | 2,500.00 | 2,500.00 |
| SUBTOTAL | | | | | 247,330.00 |
| 999D000 | Construction Allowance | Allowance | -- | -- | \$35,000.00 |
| SUBTOTAL + CONSTRUCTION ALLOWANCE = TOTAL BID | | | | | 282,330.00 |



Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions. Item Numbers are specific to the roadway referenced.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 6 – TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before the dates or within the contract time indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

7.01 The following documents are submitted with and made a condition of this Bid:

A. All documents as outlined in Section 00 22 13 "Supplementary Instructions to Bidders."

ARTICLE 8 – DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

9.01 This Bid is submitted by:

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____

(Individual's signature)

Doing business as: _____

A Partnership

Partnership Name: _____

By: _____

(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: PL Russell LLC (SEAL)

State of Incorporation: ALABAMA

Type (General Business, Professional, Service, Limited Liability): LLC

By: _____

(Signature -- attach evidence of authority to sign)

Name (typed or printed): BEN RUSSELL

Title: PRESIDENT

(CORPORATE SEAL)

Attest _____

Date of Qualification to do business in Alabama a is 6 / 19 / 24.

A Joint Venture

Name of Joint Venture: _____

First Joint Venturer Name: _____ (SEAL)

By: _____

(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____ (SEAL)

By: _____

(Signature of second joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address P.O. Box 1623 MOBILE, AL 36683

Phone No. 251-385-6891 Fax No. _____

E-mail info@prussell.com

SUBMITTED on June 25, 2024.

State Contractor License No. 57754. [If applicable]

END OF SECTION

SECTION 00 43 13

BID SECURITY FORM

BIDDER (Name and Address):

PL Russell, LLC
251 Saint Anthony St., Mobile, AL 36603



SURETY (Name and Address of Principal Place of Business):

Western Surety Company
151 N. Franklin Street, Chicago, IL 60606

OWNER (Name and Address):

City of Spanish Fort
7361 Spanish Fort Boulevard
Spanish Fort, AL 36527

BID

Bid Due Date: June 26, 2024 @ 2:00 PM

Description: Removal of existing drainage system consisting of concrete flume, inlet, and corrugated metal pipe. Construction of new drainage system consisting of three (3) inlets, 495 linear feet of concrete pipe, and concrete gutter.

BOND

Bond Number: N/A

Date (Not earlier than Bid due date): June 26, 2024

Penal sum

Five Percent of the Amount Bid, Not to Exceed \$10,000

(Words)

\$

5%

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

PL Russell, LLC

(Seal)

Western Surety Company

(Seal)

Bidder's Name and Corporate Seal

Surety's Name and Corporate Seal

By:



Signature

By:



Signature (Attach Power of Attorney)

BEN RUSSELL

Print Name

Billie Jo Sanders

Print Name

PRESIDENT

Title

Attorney-in-Fact

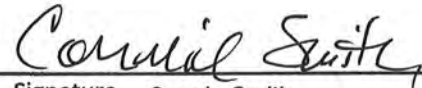
Title

Attest:



Signature

Attest:



Signature Connie Smith

Secretary

Title

Witness

Title

Note: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

END OF SECTION

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Thomas J. Gentile, Billie Jo Sanders, Paul B Scott Jr., Renee Ellis, Milton A Kopf III, David J Durden, Joshua Price, Individually

of Montgomery, AL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the Authorizing By-Laws and Resolutions printed at the bottom of this page, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 9th day of November, 2023.



WESTERN SURETY COMPANY

Larry Kasten, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 9th day of November, 2023, before me personally came Larry Kasten, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

March 2, 2026



M. Bent, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law and Resolutions of the corporation printed below this certificate are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 26th day of June, 2024.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Laws and Resolutions

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

This Power of Attorney is signed by Larry Kasten, Vice President, who has been authorized pursuant to the above Bylaw to execute power of attorneys on behalf of Western Surety Company.

This Power of Attorney may be signed by digital signature and sealed by a digital or otherwise electronic-formatted corporate seal under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 27th day of April, 2022:

“RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company.”

Go to www.cnasurety.com > Owner / Oblige Services > Validate Bond Coverage, if you want to verify bond authenticity.

SECTION 00 45 19

NON-COLLUSION AFFIDAVIT

State of ALABAMA

County of ALABAMA

BEN RUSSELL, being first duly sworn, deposes and says that:

(1) He is (owner, partner, officer, representative, or agent) of PL RUSSELL LLC the Bidder that has submitted the attached Bid;

(2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham Bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the CITY OF SPANISH BOLT or any person interested in the proposed Contract; and

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) [Signature]

Title RESIDENT

Subscribed and sworn before me on this the 25 day of JUNE, 20 24

[Signature]
Notary Public

My Commission Expires: 12-16-26



END OF SECTION

SECTION 00 51 00

NOTICE OF AWARD

Project: Denise Lane Drainage Modification Project

Owner: City of Spanish Fort | Owner's Contract No.: ARP2024-DL1

Bidder: | Engineer's Project No.: NA

Bidder's Address:

You are notified that your Bid dated _____ for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for Denise Lane Drainage Modifications.

The Contract Price of your Contract is _____ Dollars (\$_____).

_____ copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

_____ sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within [15] days of the date you receive this Notice of Award.

- 1. Deliver to the Owner [_____] fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security [Bonds] as specified in the Instructions to Bidders (Article 20), General Conditions (Paragraph 5.01), and Supplementary Conditions (Paragraph SC-5.01).
3. Other conditions precedent: _____

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

Owner

By: _____

Authorized Signature

Title

Copy to Engineer

END OF SECTION

SECTION 00 52 00

AGREEMENT

THIS AGREEMENT is by and between City of Spanish Fort (“Owner”) and
PL Russell LLC (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – Work

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

Denise Lane Drainage Modifications

Removal of existing drainage system consisting of concrete flume, inlet, and corrugated metal pipe. Construction of new drainage system consisting of three (3) inlets, 495 linear feet of concrete pipe, and concrete gutter.

ARTICLE 2 – The Project

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Removal of existing drainage system consisting of concrete flume, inlet, and corrugated metal pipe. Construction of new drainage system consisting of three (3) inlets, 495 linear feet of concrete pipe, and concrete gutter.

ARTICLE 3 – Engineer

3.01 The Projects to be completed under this contract will be designed by S. Matthew Jones, P.E. (Engineer), which 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 the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – Contract Times

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed within **60 working days** after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions or when the contract amount is exhausted (whichever occurs first), and shall be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 60 days after the date when the Contract Times commence to run. The contractor should note that these days represent the overall contract time. Individual Notice to Proceed documents will be issued to the contractor for each individual maintenance task to be performed under this contract. Contract times commence to run from the date of the Notice to Proceed.

4.03 Liquidated Damages

Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding 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 liquidated damages in accordance with the Alabama Department of Transportation Standard Specifications for Highway Construction (Latest Edition).

ARTICLE 5 – Contract Price

- 5.01 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 Paragraphs 5.01.A below:
 - A. 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 actual quantity of that item:

BID FORM

| Item | Description | Unit | Quantity | Unit Cost | Total Item Cost |
|--|--|-----------|----------|-----------|-------------------|
| 206D000 | Removing Pipe | LS | 1 | 4,200.00 | 4,200.00 |
| 206E001 | Removing Inlets | LS | 1 | 1,100.00 | 1,100.00 |
| 206X000 | Removing Asphalt | LS | 1 | 2,100.00 | 2,100.00 |
| 206C002 | Removing Concrete Slope Paving | LS | 1 | 6,000.00 | 6,000.00 |
| 206D011 | Removing Fence | LS | 1 | 6,000.00 | 6,000.00 |
| 206E062 | Removing Tree | LS | 1 | 15,000.00 | 15,000.00 |
| 210A000 | Structure Excavation | LS | 1 | 8,000.00 | 8,000.00 |
| 201E000 | Borrow Excavation (Underwater Backfill) (Sand) | CUYD | 225 | 24.00 | 5,400.00 |
| 210F002 | Borrow Excavation (Underwater Backfill) (ALDOT #57) | TON | 150 | 70.00 | 10,500.00 |
| 424A363 | Superpave Bituminous Concrete Wearing Surface Layer, Patching, 1/2" Maximum Aggregate Size Mix | LS | 1 | 3,400.00 | 3,400.00 |
| 530B003 | 36" Span, 23" Rise Roadway Pipe (Class 3 R.C.) | LS | 1 | 30,000.00 | 30,000.00 |
| 533A099 | 24" Storm Sewer Pipe (Class 3 R.C.) | LS | 1 | 20,000.00 | 20,000.00 |
| 533A100 | 30" Storm Sewer Pipe (Class 3 R.C.) | LS | 1 | 22,000.00 | 22,000.00 |
| 600A000 | Mobilization | LS | 1 | 43,000.00 | 43,000.00 |
| 614A000 | Slope Paving | LS | 1 | 2,300.00 | 2,300.00 |
| 619A003 | 30" Roadway Pipe End Treatment, Class 1 | LS | 1 | 2,200.00 | 2,200.00 |
| 621C008 | Inlets, Type E | LS | 1 | 10,000.00 | 10,000.00 |
| 623A001 | Concrete Gutter (Valley) | LS | 1 | 8,300.00 | 8,300.00 |
| 621X00 | Weir Inlet | LS | 1 | 10,000.00 | 10,000.00 |
| 634X001 | 4' Chain Link Fence | LF | 397 | 20.00 | 7,940.00 |
| 634X002 | 6' Wood Privacy Fence | LF | 30 | 63.00 | 1,890.00 |
| 654A000 | Solid Sodding | LS | 1 | 12,000.00 | 12,000.00 |
| 999A000 | Construction Material Testing (\$5000 Min. Bid) | LS | 1 | 5,000.00 | 5,000.00 |
| 999B000 | Erosion Control | LS | 1 | 8,500.00 | 8,500.00 |
| 999C000 | Utility Coordination (Power and Direct TV) | LS | 1 | 2,500.00 | 2,500.00 |
| SUBTOTAL | | | | | 247,330.00 |
| 999D000 | Construction Allowance | Allowance | -- | -- | \$35,000.00 |
| SUBTOTAL + CONSTRUCTION ALLOWANCE = TOTAL BID | | | | | 282,330.00 |



The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

ARTICLE 6 – Payment Procedures

6.01 Submittal and Processing of Payments

- A. 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.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
 - a. 100 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. 100 percent of cost of materials not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of

the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – Interest

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at 0.5% per month on the unpaid balance.

ARTICLE 8 – Contractor’s Representations

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. 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, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all, if any: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered (if applicable) the information known to Contractor, if any; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. 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.

- H. 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.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – Contract Documents

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to_____, inclusive).
 - 2. Performance bond (pages_____to_____, inclusive).
 - 3. Payment bond (pages_____to_____, inclusive).
 - 4. General Conditions (pages_____to_____, inclusive).
 - 5. Supplementary Conditions (pages_____to_____, inclusive).
 - 6. Specifications (as listed in the table of contents of the Project Manual).
 - 7. Drawings (as listed in the table of contents of the Project Manual).
 - 8. Addenda (numbers_____to_____, inclusive).
 - 9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor’s Bid (pages_____ to_____, inclusive).
 - b. Documentation submitted by Contractor prior to Notice of Award (pages_____to_____, inclusive).
 - 10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (pages_____to_____, inclusive).
 - b. Work Change Directives.
 - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.

- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – Miscellaneous

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract 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.

10.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

- A. Any provision or part 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.

10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of

Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 Other Provisions

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____

(Where applicable)

Agent for service of process:

END OF SECTION

SECTION 00 55 00

NOTICE TO PROCEED

Project: Denise Lane Drainage Modification Project

| | |
|-----------------------------|-----------------------------------|
| Owner: City of Spanish Fort | Owner's Contract No.: ARP2024-DL1 |
| Contractor: | Engineer's Project No.: NA |
| Contractor's Address: | |
| | |
| | |
| | |

You are notified that the Contract Times under the above Contract will commence to run on _____. On or before that date, you are to start performing your obligations under the Contract Documents. No field work to proceed prior to this date. In accordance with Article 4 of the Agreement, the date of Substantial Completion is _____, and the date of readiness for final payment is _____ [(or) the number of days to achieve Substantial Completion is _____, and the number of days to achieve readiness for final payment is _____].

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds and loss payees) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

| | |
|-------|----------------------|
| _____ | City of Spanish Fort |
| _____ | Owner |
| _____ | Given by: |
| _____ | Authorized Signature |
| _____ | Title |
| _____ | Date |

Copy to Engineer

END OF SECTION

00 55 00-2

NOTICE TO PROCEED

SECTION 00 61 13

PERFORMANCE BOND

CONTRACTOR (name and address):

SURETY (name and address of principal place of business):

OWNER: City of Spanish Fort
7361 Spanish Fort Boulevard
Spanish Fort, AL 36527

CONSTRUCTION CONTRACT:

Effective Date of the Agreement:

Amount:

Description: Removal of existing drainage system consisting of concrete flume, inlet, and corrugated metal pipe. Construction of new drainage system consisting of three (3) inlets, 495 linear feet of concrete pipe, and concrete gutter.

BOND

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount:

Modifications to this Bond Form: [] None [] See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

_____ (seal)

_____ (seal)

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____

Signature

Print Name

Title

Attest: _____

Signature

Title

By: _____

Signature (*attach power of attorney*)

Print Name

Title

Attest: _____

Signature

Title

Note: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:
 - 3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - 3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

- 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
- 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
 - 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
 - 7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue

on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Definitions
 - 14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
 - 14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
 - 14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
16. Modifications to this Bond are as follows:
<Contractor/surety to list if any>

END OF SECTION

SECTION 00 61 15

PAYMENT BOND

CONTRACTOR (name and address):

SURETY (name and address of principal place of business):

OWNER: City of Spanish Fort
7361 Spanish Fort Boulevard
Spanish Fort, AL 36527

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description: Denise Lane Drainage Modification Project

Removal of existing drainage system consisting of concrete flume, inlet, and corrugated metal pipe. Construction of new drainage system consisting of three (3) inlets, 495 linear feet of concrete pipe, and concrete gutter.

BOND

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount:

Modifications to this Bond Form: [] None [] See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

_____ (seal)

_____ (seal)

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____

Signature

Print Name

Title

Attest: _____

Signature

Title

By: _____

Signature (*attach power of attorney*)

Print Name

Title

Attest: _____

Signature

Title

Note: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

- 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
- 7.2 Pay or arrange for payment of any undisputed amounts.
- 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

- 16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
18. Modifications to this Bond are as follows:
- <Contractor/surety to list if any>

END OF SECTION

CERTIFICATE OF SUBSTANTIAL COMPLETION

Project: Denise Lane Drainage Modification Project

| | |
|-----------------------------|-----------------------------------|
| Owner: City of Spanish Fort | Owner's Contract No.: ARP2024-DL1 |
| | Engineer's Project No.: NA |

This [tentative] [definitive] Certificate of Substantial Completion applies to:

- All Work under the Contract Documents: The following specified portions of the Work:

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby declared and is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

A [tentative] [definitive] list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as provided in the Contract Documents except as amended as follows:

- Amended Responsibilities Not Amended

Owner's Amended Responsibilities:

Contractor's Amended Responsibilities:

The following documents are attached to and made part of this Certificate:

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Executed by Engineer _____ Date _____

Accepted by Contractor _____ Date _____

Accepted by Owner _____ Date _____

END OF SECTION

TABLE OF CONTENTS

| | Page |
|--|-------------|
| Article 1 – Definitions and Terminology | 6 |
| 1.01 Defined Terms | 6 |
| 1.02 Terminology | 9 |
| Article 2 – Preliminary Matters | 10 |
| 2.01 Delivery of Bonds and Evidence of Insurance | 10 |
| 2.02 Copies of Documents | 11 |
| 2.03 Commencement of Contract Times; Notice to Proceed | 11 |
| 2.04 Starting the Work | 11 |
| 2.05 Before Starting Construction | 11 |
| 2.06 Preconstruction Conference; Designation of Authorized Representatives | 11 |
| 2.07 Initial Acceptance of Schedules | 11 |
| Article 3 – Contract Documents: Intent, Amending, Reuse | 12 |
| 3.01 Intent | 12 |
| 3.02 Reference Standards | 12 |
| 3.03 Reporting and Resolving Discrepancies | 13 |
| 3.04 Amending and Supplementing Contract Documents | 13 |
| 3.05 Reuse of Documents | 14 |
| 3.06 Electronic Data | 14 |
| Article 4 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions; Reference Points | 14 |
| 4.01 Availability of Lands | 14 |
| 4.02 Subsurface and Physical Conditions | 15 |
| 4.03 Differing Subsurface or Physical Conditions | 15 |
| 4.04 Underground Facilities | 16 |
| 4.05 Reference Points | 17 |

| | | |
|--|---|----|
| 4.06 | Hazardous Environmental Condition at Site..... | 17 |
| Article 5 – Bonds and Insurance | | 19 |
| 5.01 | Performance, Payment, and Other Bonds..... | 19 |
| 5.02 | Licensed Sureties and Insurers | 20 |
| 5.03 | Certificates of Insurance..... | 20 |
| 5.04 | Contractor’s Insurance | 20 |
| 5.05 | Owner’s Liability Insurance | 21 |
| 5.06 | Property Insurance | 22 |
| 5.07 | Waiver of Rights | 23 |
| 5.08 | Receipt and Application of Insurance Proceeds | 24 |
| 5.09 | Acceptance of Bonds and Insurance; Option to Replace | 24 |
| 5.10 | Partial Utilization, Acknowledgment of Property Insurer | 24 |
| Article 6 – Contractor’s Responsibilities..... | | 25 |
| 6.01 | Supervision and Superintendence..... | 25 |
| 6.02 | Labor; Working Hours | 25 |
| 6.03 | Services, Materials, and Equipment | 25 |
| 6.04 | Progress Schedule | 26 |
| 6.05 | Substitutes and “Or-Equals” | 26 |
| 6.06 | Concerning Subcontractors, Suppliers, and Others..... | 28 |
| 6.07 | Patent Fees and Royalties | 29 |
| 6.08 | Permits | 30 |
| 6.09 | Laws and Regulations | 30 |
| 6.10 | Taxes..... | 30 |
| 6.11 | Use of Site and Other Areas | 31 |
| 6.12 | Record Documents | 31 |
| 6.13 | Safety and Protection | 32 |
| 6.14 | Safety Representative | 32 |
| 6.15 | Hazard Communication Programs..... | 33 |

| | | |
|--|---|----|
| 6.16 | Emergencies | 33 |
| 6.17 | Shop Drawings and Samples..... | 33 |
| 6.18 | Continuing the Work | 34 |
| 6.19 | Contractor’s General Warranty and Guarantee | 35 |
| 6.20 | Indemnification | 35 |
| 6.21 | Delegation of Professional Design Services..... | 36 |
| Article 7 – Other Work at the Site | | 36 |
| 7.01 | Related Work at Site..... | 36 |
| 7.02 | Coordination..... | 37 |
| 7.03 | Legal Relationships | 37 |
| Article 8 – Owner’s Responsibilities | | 38 |
| 8.01 | Communications to Contractor | 38 |
| 8.02 | Replacement of Engineer | 38 |
| 8.03 | Furnish Data | 38 |
| 8.04 | Pay When Due | 38 |
| 8.05 | Lands and Easements; Reports and Tests | 38 |
| 8.06 | Insurance | 38 |
| 8.07 | Change Orders..... | 38 |
| 8.08 | Inspections, Tests, and Approvals | 38 |
| 8.09 | Limitations on Owner’s Responsibilities..... | 38 |
| 8.10 | Undisclosed Hazardous Environmental Condition | 38 |
| 8.11 | Evidence of Financial Arrangements | 39 |
| 8.12 | Compliance with Safety Program | 39 |
| Article 9 – Engineer’s Status During Construction..... | | 39 |
| 9.01 | Owner’s Representative | 39 |
| 9.02 | Visits to Site | 39 |
| 9.03 | Project Representative | 39 |
| 9.04 | Authorized Variations in Work | 40 |

| | | |
|---|---|----|
| 9.05 | Rejecting Defective Work..... | 40 |
| 9.06 | Shop Drawings, Change Orders and Payments | 40 |
| 9.07 | Determinations for Unit Price Work..... | 40 |
| 9.08 | Decisions on Requirements of Contract Documents and Acceptability of Work | 40 |
| 9.09 | Limitations on Engineer’s Authority and Responsibilities | 41 |
| 9.10 | Compliance with Safety Program | 41 |
| Article 10 – Changes in the Work; Claims..... | | 41 |
| 10.01 | Authorized Changes in the Work..... | 41 |
| 10.02 | Unauthorized Changes in the Work | 42 |
| 10.03 | Execution of Change Orders | 42 |
| 10.04 | Notification to Surety | 42 |
| 10.05 | Claims | 42 |
| Article 11 – Cost of the Work; Allowances; Unit Price Work | | 43 |
| 11.01 | Cost of the Work | 43 |
| 11.02 | Allowances | 46 |
| 11.03 | Unit Price Work | 46 |
| Article 12 – Change of Contract Price; Change of Contract Times | | 47 |
| 12.01 | Change of Contract Price..... | 47 |
| 12.02 | Change of Contract Times | 48 |
| 12.03 | Delays | 48 |
| Article 13 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work | | 49 |
| 13.01 | Notice of Defects..... | 49 |
| 13.02 | Access to Work..... | 49 |
| 13.03 | Tests and Inspections | 49 |
| 13.04 | Uncovering Work..... | 49 |
| 13.05 | Owner May Stop the Work..... | 50 |
| 13.06 | Correction or Removal of Defective Work | 50 |

| | | |
|--|---|----|
| 13.07 | Correction Period | 50 |
| 13.08 | Acceptance of Defective Work | 51 |
| 13.09 | Owner May Correct Defective Work | 52 |
| Article 14 – Payments to Contractor and Completion | | 52 |
| 14.01 | Schedule of Values | 52 |
| 14.02 | Progress Payments | 52 |
| 14.03 | Contractor’s Warranty of Title | 55 |
| 14.04 | Substantial Completion | 55 |
| 14.05 | Partial Utilization | 56 |
| 14.06 | Final Inspection | 56 |
| 14.07 | Final Payment | 56 |
| 14.08 | Final Completion Delayed | 57 |
| 14.09 | Waiver of Claims..... | 58 |
| Article 15 – Suspension of Work and Termination..... | | 58 |
| 15.01 | Owner May Suspend Work..... | 58 |
| 15.02 | Owner May Terminate for Cause | 58 |
| 15.03 | Owner May Terminate For Convenience | 59 |
| 15.04 | Contractor May Stop Work or Terminate | 59 |
| Article 16 – Dispute Resolution | | 60 |
| 16.01 | Methods and Procedures | 60 |
| Article 17 – Miscellaneous | | 60 |
| 17.01 | Giving Notice | 60 |
| 17.02 | Computation of Times | 61 |
| 17.03 | Cumulative Remedies..... | 61 |
| 17.04 | Survival of Obligations..... | 61 |
| 17.05 | Controlling Law..... | 61 |
| 17.06 | Headings..... | 61 |

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.

31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 *Terminology*

- A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work,

or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “working day” means any day other than a Saturday, Sunday, or public (Federal or State of Alabama) holiday
- 2.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to two printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with

Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 Reference Standards

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 1. A Field Order;
 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
 3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 - 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be

performed and Owner's interest therein.

- C. Contractor shall provide for all additional lands and access thereto not provided by the Owner that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.
- C. *Possible Price and Times Adjustments:*
1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
 3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;

- b. locating all Underground Facilities shown or indicated in the Contract Documents;
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated:

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 Reference Points

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and Contractor shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the

Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted

portion of the Work performed by Owner's own forces or others in accordance with Article 7.

- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of

that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or 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.

5.03 Certificates of Insurance

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 Contractor's Insurance

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
 2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner 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 5.03 will so provide);
 5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
 6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own

liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner 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:
1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, 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.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered 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 loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B 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 Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in

coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
 - 2. *Substitute Items:*
 - a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
 - b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially

equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in

the case of a substitute and an approved Shop Drawing for an “or equal.” Engineer will advise Contractor in writing of any negative determination.

- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor’s expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer’s Cost Reimbursement:* Engineer will record Engineer’s costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor’s Expense:* Contractor shall provide all data in support of any proposed substitute or “or-equal” at Contractor’s expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner’s acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor’s own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor

2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention,

design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.
 - 1. *Shop Drawings:*
 - a. Submit number of copies specified in the General Requirements.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.
 - 2. *Samples:*
 - a. Submit number of Samples specified in the Specifications.
 - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Submittal Procedures:*
 - 1. Before submitting each Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by Engineer;
 - 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. use or occupancy of the Work or any part thereof by Owner;
 - 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 - 6. any inspection, test, or approval by others; or
 - 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for

Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 Delegation of Professional Design Services

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and
 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' 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.
- C. 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 to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or 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 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. 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 (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The

date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, 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.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. 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 in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall

promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to

substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
 - 1. deny the Claim in whole or in part;
 - 2. approve the Claim; or
 - 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. 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 not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
 - 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 on the Work. 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 outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

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.
3. Payments made by Contractor to Subcontractors for Work performed 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 acceptable. 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 this Paragraph 11.01.
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.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. 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.
 - c. 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, assembly, dismantling, and removal thereof. All such costs shall be 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.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

- e. 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.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the 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. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.
- B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
 - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 - 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 4. Costs due to the 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, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 - 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

- D. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

- A. 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 performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*:
 - 1. Contractor agrees that:
 - a. the cash 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
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*:
 - 1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. 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.

11.03 Unit Price Work

- A. 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 unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of 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 subject to the provisions of Paragraph 9.07.
- C. 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.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 - 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
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. 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 PRICE; CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. 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:
 - 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 Paragraph 11.03); or
 - 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 12.01.C.2); or
 - 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 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee*: The Contractor's fee for overhead and profit shall be determined as follows:
 - 1. a mutually acceptable fixed fee; or
 - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 10 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 10 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 Delays

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times 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 12.02.A. 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.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 Owner May Stop the Work

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed 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, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in

Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. 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.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, 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.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. 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, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 Owner May Correct Defective Work

- A. 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 13.06.A, 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, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or 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.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 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. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. 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.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

- A. *Applications for Payments:*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting

documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 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.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.
- C. *Payment Becomes Due:*
1. Thirty days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.
- D. *Reduction in Payment:*
1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. 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;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
 2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating

the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

- A. 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.
- B. Promptly after Contractor's notification, 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.
- C. If Engineer considers the Work substantially complete, Engineer will 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 14 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 14 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.
- D. 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, and protection of the Work, 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.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which 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, subject to the following conditions:
1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 2. 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.
 3. 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 Paragraph 14.04 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.
 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;

- b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.
- B. Engineer's Review of Application and Acceptance:*
1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. Payment Becomes Due:*
1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

- A. The making and acceptance of final payment will constitute:
 - 1. a waiver of any Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 - 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will justify termination for cause:
 - 1. Contractor's persistent failure 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 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 - 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 - 3. Contractor's repeated disregard of the authority of Engineer; or
 - 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 - 1. 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);
 - 2. 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
 - 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the

Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to 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. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. 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.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;
 - 2. 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;
 - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.
- B. 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.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 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 Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

END OF SECTION

SECTION 00 94 63

CHANGE ORDER

No. _____

Date of Issuance:

Effective Date:

| | |
|---|-------------------------------------|
| Project: Denise Lane Drainage Modification Project | Owner's Project No.: ARP2024-DL1 |
|---|-------------------------------------|

| | |
|--------------------------------|-------------------|
| Owner: City of Spanish Fort | Date of Contract: |
|--------------------------------|-------------------|

| | |
|-------------|-------------------------------|
| Contractor: | Engineer's Project No.: NA |
|-------------|-------------------------------|

The Contract Documents are modified as follows upon execution of this Change Order:

Description:

Attachments (list documents supporting change):

| CHANGE IN CONTRACT PRICE: | CHANGE IN CONTRACT TIMES: |
|---------------------------|---------------------------|
|---------------------------|---------------------------|

| | |
|--|--|
| Original Contract Price: \$ _____ | Original Contract Times: <input type="checkbox"/> Working days <input type="checkbox"/> Calendar days Substantial completion (days or date): _____ Ready for final payment (days or date): _____ |
|--|--|

| | |
|--|---|
| [Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____: \$ _____ | [Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____: Substantial completion (days): _____ Ready for final payment (days): _____ |
|--|---|

| | |
|--|---|
| Contract Price prior to this Change Order: \$ _____ | Contract Times prior to this Change Order: Substantial completion (days or date): _____ Ready for final payment (days or date): _____ |
|--|---|

[Increase] [Decrease] of this Change Order:

\$ _____

[Increase] [Decrease] of this Change Order:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

Contract Price incorporating this Change Order:

\$ _____

Contract Times with all approved Change Orders:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

RECOMMENDED:

By: _____
Engineer (Authorized Signature)

Date: _____

Approved by Funding Agency (if applicable):

ACCEPTED:

By: _____
Owner (Authorized Signature)

Date: _____

ACCEPTED:

By: _____
Contractor (Authorized Signature)

Date: _____

Date: _____

END OF SECTION

SECTION 01 00 00 - GENERAL REQUIREMENTS

PART 1 - PRODUCTS (Not Used)

PART 2 - EXECUTION

- 2.1 All work will be constructed in accordance with the Alabama Department of Transportation Standard Specifications for Highway Construction (Latest Edition) and/or the Spanish Fort Subdivision regulations, whichever is stricter, and any other applicable laws, rules, and regulations.
- 2.2 It will be the contractor's responsibility to adequately schedule and coordinate work on the project and with utility personnel for locating conflicts with existing utilities. Engineer shall be immediately notified of any conflicts. Contractor will be compensated for any unavoidable relocation when agreed upon by the Owner.
- 2.3 Any temporary or permanent relocation of power poles shall be the responsibility of the contractor to coordinate.
- 2.4 Any damage to existing utilities or other existing improvements, including existing septic systems, shall be repaired and paid for by the contractor at no additional expense to Owner. Contractor shall ensure vibrations from construction equipment do not damage adjacent structure, and shall be responsible for any damages.
- 2.5 Existing streets, roads, and parking areas shall be maintained passable at all times and shall be open during all phases of construction. The contractor shall take all necessary precautions to schedule and sequence the work to comply with these provisions.
- 2.6 Any Alabama Department of Environmental Management (ADEM) permit required shall be kept onsite at all times.
- 2.7 The contractor shall be responsible for complying with the Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas, prepared by the Alabama Soil and Water Conservation Committee, 2014 Edition. In addition, the Contractor shall be solely responsible for any damages caused by construction, including sediment or other erodible materials being deposited onto adjacent property.
- 2.8 All areas disturbed by the construction of this project shall be dressed, graded and have Erosion Control BMP's installed.
- 2.9 All property line markers disturbed during construction shall be replaced at the contractor's expense. The contractor shall employ a land surveyor registered in the State of Alabama to reset property markers.
- 2.10 All excess material from excavations shall be disposed of by the contractor at no additional cost to the owner in compliance with all Federal, State, and Local Standard Regulations.
- 2.11 Site Access and Temporary Controls: Conduct operations to ensure minimum interference with roads, streets, walks, walkways, and other adjacent occupied and used facilities.

END OF SECTION 010000

PHOTOGRAPHIC DOCUMENTATION

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements for the following:
 - 1. Preconstruction photographs.
 - 2. Periodic construction photographs.
 - 3. Final completion construction photographs.

1.3 INFORMATIONAL SUBMITTALS

- A. Key Plan: Submit key plan of Project site with notation of vantage points marked for location and direction of each photograph, or provide other approved means of identifying vantage points, e.g. use of a photo documentation app such as "Site Prep".
- B. Digital Photographs: Submit image files within three days of taking photographs.
- C. Photographs shall be delivered to the City of Spanish Fort on a portable usb drive or via email.

1.4 USAGE RIGHTS

- A. Obtain and transfer copyright usage rights from photographer to Owner for unlimited reproduction of photographic documentation.

PART 2 - PRODUCTS

2.1 PHOTOGRAPHIC MEDIA

- A. Digital Images: Provide images in JPG format, produced by a digital camera with minimum sensor size of 8 megapixels, and at an image resolution of not less than 3200 by 2400 pixels.

PART 3 - EXECUTION

3.1 CONSTRUCTION PHOTOGRAPHS

- A. General: Take photographs using the maximum range of depth of field, and that are in focus, to clearly show the Work. Photographs with blurry or out-of-focus areas will not be accepted.
 - 1. Maintain key plan with each set of construction photographs that identifies each photographic location or provide other means to identify location.
- B. Digital Images: Submit digital images exactly as originally recorded in the digital camera, without alteration, manipulation, editing, or modifications using image-editing software.
- C. Preconstruction Photographs: Before starting construction, take photographs of Project site and surrounding properties, including existing items to remain during construction, from different vantage points, as directed by Engineer. Take final construction photographs as close as possible to preconstruction photographs.
 - 1. Flag/delineate construction limits before taking construction photographs.
 - 2. Take 50 photographs (min) to show existing conditions adjacent to property before starting the Work.

3. Photographs shall be taken (at the minimum) at:
 - a. the centerline of the baseline of the project,
 - b. at the left and right limits of construction at even station numbers, looking both up station and down station,
 4. Take additional photographs as required to record settlement or cracking of structures, pavements, and improvements that are adjacent to project or along access.
 5. Take additional photographs of any existing conditions that could be construed as damage caused by construction.
- D. Periodic Construction Photographs: Take 30 photographs (min) weekly, with timing adjusted to coincide with the cutoff date associated with each Application for Payment. Select vantage points to show status of construction and progress since last photographs were taken.

END OF SECTION

SECTION 01 10 00 - SUMMARY

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 PROJECT INFORMATION

- A. Project Identification: Denise Lane Drainage Modification Project
 - 1. Project Location: Spanish Fort, AL
- B. Owner: City of Spanish Fort
 - 1. Owner's Representative: Casey Rains, City Planner, City of Spanish Fort
- C. Engineer: S. Matthew Jones, P.E.
- D. Construction Manager:
 - 1. Construction Manager for this Project is Project's contractor. The terms "Construction Manager" and "Contractor" are synonymous.

1.3 WORK COVERED BY CONTRACT DOCUMENTS

- A. The Work of Project is defined by the Contract Documents and generally described in 000520.Art 1.01.
- B. Type of Contract:
 - 1. Unit Price/Item Bid

1.4 ACCESS TO SITE

- A. General: Contractor shall have full use of Project site for construction operations during construction period.

1.5 WORK RESTRICTIONS

- A. Work Restrictions, General: Comply with restrictions on construction operations.
 - 1. Comply with limitations on use of public streets and with other requirements of authorities having jurisdiction.
- B. Contractor shall coordinate the use of access drives with owners. Access drives shall remain open and usable by owners.

1.6 SPECIFICATION AND DRAWING CONVENTIONS

- A. Specification Content: The Specifications use certain conventions for the style of language and the intended meaning of certain terms, words, and phrases when used in particular situations. These conventions are as follows:
 - 1. Imperative mood and streamlined language are generally used in the Specifications. The words "shall," "shall be," or "shall comply with," depending on the context, are implied where a colon (:) is used within a sentence or phrase.
 - 2. Specification requirements are to be performed by Contractor unless specifically stated otherwise. Items under which there is no bid item shall be considered incidental to project.
- B. Division 01 General Requirements: Requirements of Sections in Division 01 apply to the Work of all Sections in the Specifications.
- C. Drawing Coordination: Requirements for materials and products identified on Drawings are described in detail in the Specifications.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION 011000

SECTION 01 31 00 - PROJECT MANAGEMENT AND COORDINATION

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes administrative provisions for coordinating construction operations on Project including, but not limited to, the following:
 - 1. General coordination procedures.
 - 2. Coordination drawings.
 - 3. Requests for Information (RFIs).
 - 4. Project Web site.
 - 5. Project meetings.

1.3 DEFINITIONS

- A. RFI: Request from Owner, Engineer, or Contractor seeking information required by or clarifications of the Contract Documents.

1.4 INFORMATIONAL SUBMITTALS

- A. Subcontract List: Prepare a written summary identifying individuals or firms proposed for each portion of the Work, including those who are to furnish products or equipment fabricated to a special design. Include the following information in tabular form:
 - 1. Name, address, and telephone number of entity performing subcontract or supplying products.
 - 2. Number and title of related Specification Section(s) covered by subcontract.
 - 3. Drawing number and detail references, as appropriate, covered by subcontract.
- B. Key Personnel Names: Within 15 days of starting construction operations, submit a list of key personnel assignments, including superintendent and other personnel in attendance at Project site. Identify individuals and their duties and responsibilities; list addresses and telephone numbers, including cellular telephone numbers and e-mail addresses. Provide names, addresses, and telephone numbers of individuals assigned as alternates in the absence of individuals assigned to Project.

1.5 GENERAL COORDINATION PROCEDURES

- A. Coordination: Coordinate construction operations included in different Sections of the Specifications to ensure efficient and orderly installation of each part of the Work. Coordinate construction operations, included in different Sections, that depend on each other for proper installation, connection, and operation.
 - 1. Schedule construction operations in sequence required to obtain the best results where installation of one part of the Work depends on installation of other components, before or after its own installation.
 - 2. Coordinate installation of different components to ensure maximum performance and accessibility for required maintenance, service, and repair.
 - 3. Make adequate provisions to accommodate items scheduled for later installation.
- B. Prepare memoranda for distribution to each party involved, outlining special procedures required for coordination. Include such items as required notices, reports, and list of attendees at meetings.
- C. Conservation: Coordinate construction activities to ensure that operations are carried out with consideration given to conservation of energy, water, and materials. Coordinate use of temporary utilities to minimize waste.

1.6 REQUESTS FOR INFORMATION (RFIs)

- A. General: Immediately on discovery of the need for additional information or interpretation of the Contract Documents, Contractor shall prepare and submit an RFI in the form specified.
 - 1. Engineer will return RFIs submitted to Engineer by other entities controlled by Contractor with no response.
 - 2. Coordinate and submit RFIs in a prompt manner so as to avoid delays in Contractor's work or work of subcontractors.
- B. Content of the RFI: Include a detailed, legible description of item needing information or interpretation and the following:
 - 1. Project name.
 - 2. Date.
 - 3. RFI number, numbered sequentially.
 - 4. RFI subject.
 - 5. Specification Section number and title and related paragraphs, as appropriate.
 - 6. Drawing number and detail references, as appropriate.
 - 7. Field dimensions and conditions, as appropriate.
 - 8. Contractor's suggested resolution. If Contractor's suggested resolution impacts the Contract Time or the Contract Sum, Contractor shall state impact in the RFI.
 - 9. Contractor's signature.
 - 10. Attachments: Include sketches, descriptions, measurements, photos, Product Data, Shop Drawings, coordination drawings, and other information necessary to fully describe items needing interpretation.

- C. Engineer's Action: Engineer will review each RFI, determine action required, and respond. Allow seven working days for Engineer's response for each RFI. RFIs received by Engineer after 1:00 p.m. will be considered as received the following working day.
1. The following Contractor-generated RFIs will be returned without action:
 - a. Requests for approval of submittals.
 - b. Requests for approval of substitutions.
 - c. Requests for approval of Contractor's means and methods.
 - d. Requests for coordination information already indicated in the Contract Documents.
 - e. Requests for adjustments in the Contract Time or the Contract Sum.
 - f. Requests for interpretation of Engineer's actions on submittals.
 - g. Incomplete RFIs or inaccurately prepared RFIs.
 2. Engineer's action may include a request for additional information, in which case Engineer's time for response will date from time of receipt of additional information.
 3. Engineer's action on RFIs that may result in a change to the Contract Time or the Contract Sum may be eligible for Contractor to submit Change Proposal according to Section 012600 "Contract Modification Procedures."
 - a. If Contractor believes the RFI response warrants change in the Contract Time or the Contract Sum, notify Engineer in writing within 3 days of receipt of the RFI response.
- D. RFI Log: Prepare, maintain, and submit a tabular log of RFIs organized by the RFI number. Submit log.
- E. On receipt of Engineer's action, update the RFI log and immediately distribute the RFI response to affected parties. Review response and notify Engineer within seven days if Contractor disagrees with response.
1. Identification of related Field Order, Work Change Directive, and Proposal Request, as appropriate.

1.7 PROJECT MEETINGS

- A. General: Schedule and conduct meetings and conferences via video conference provided by engineer unless otherwise agreed.
- B. Preconstruction Conference: Engineer will schedule and conduct a preconstruction conference before starting construction, at a time convenient to Owner and Engineer, but no later than 15 days after execution of the Agreement.
- C. Progress Meetings: Conduct progress meetings at weekly intervals.
1. Agenda: Review and correct or approve minutes of previous progress meeting. Review other items of significance that could affect progress. Include topics for discussion as appropriate to status of Project.
 - a. Contractor's Construction Schedule: Review progress since the last meeting. Determine whether each activity is on time, ahead of schedule, or behind schedule,

in relation to Contractor's construction schedule. Determine how construction behind schedule will be expedited; secure commitments from parties involved to do so. Discuss whether schedule revisions are required to ensure that current and subsequent activities will be completed within the Contract Time.

- 1) Review schedule for next period.
2. Minutes: Entity responsible for conducting the meeting will record and distribute the meeting minutes to each party present and to parties requiring information.
 - a. Schedule Updating: Revise Contractor's construction schedule after each progress meeting where revisions to the schedule have been made or recognized. Issue revised schedule concurrently with the report of each meeting.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION 013100

SECTION 01 32 00 - CONSTRUCTION PROGRESS DOCUMENTATION

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements for documenting the progress of construction during performance of the Work, including the following:
 - 1. Contractor's construction schedule.
 - 2. Weekly construction reports.
 - 3. Special reports.

1.3 INFORMATIONAL SUBMITTALS

- A. Format for Submittals: Submit required submittals in the following format:
 - 1. PDF electronic file.
- B. Contractor's Construction Schedule: Initial schedule, of size required to display entire schedule for entire construction period.
- C. Construction Schedule Updating Reports: Submit with Applications for Payment.
- D. Weekly Construction Reports: Submit at weekly intervals.
- E. Site Condition Reports: Submit at time of discovery of differing conditions.

PART 2 - PRODUCTS

2.1 CONTRACTOR'S CONSTRUCTION SCHEDULE, GENERAL

- A. Time Frame: Extend schedule from date established for the Notice of Award to date of final completion.
- B. Recovery Schedule: When periodic update indicates the Work is 14 or more calendar days behind the current approved schedule, submit a separate recovery schedule indicating means by which Contractor intends to regain compliance with the schedule. Indicate changes to working hours, working days, crew sizes, and equipment required to achieve compliance, and date by which recovery will be accomplished.

2.2 REPORTS

- A. Weekly Construction Reports: Prepare a construction report summarizing the following information concerning events at Project site:
 - 1. List of subcontractors at Project site.
 - 2. Approximate count of personnel at Project site.
 - 3. Equipment at Project site.
 - 4. Material deliveries (with delivery receipts)
 - 5. General weather conditions, including presence of rain or snow.
 - 6. Meetings and significant decisions.
 - 7. Unusual events (see special reports).
 - 8. Stoppages, delays, shortages, and losses.
 - 9. Emergency procedures.
 - 10. Orders and requests of authorities having jurisdiction.
 - 11. Change Orders received and implemented.
 - 12. Change Directives received and implemented.

- B. Site Condition Reports: Immediately on discovery of a difference between site conditions and the Contract Documents, prepare and submit a detailed report. Submit with a Request for Information. Include a detailed description of the differing conditions, together with recommendations for changing the Contract Documents.

2.3 SPECIAL REPORTS

- A. General: Submit special reports directly to Owner within one day(s) of an occurrence. Distribute copies of report to parties affected by the occurrence.

- B. Reporting Unusual Events: When an event of an unusual and significant nature occurs at Project site, whether or not related directly to the Work, prepare and submit a special report. List chain of events, persons participating, response by Contractor's personnel, evaluation of results or effects, and similar pertinent information. Advise Owner in advance when these events are known or predictable.

PART 3 - EXECUTION

3.1 CONTRACTOR'S CONSTRUCTION SCHEDULE

- A. Distribution: Distribute copies of approved schedule to Engineer and other parties identified by Contractor with a need-to-know schedule responsibility.

END OF SECTION 013200

SECTION 01 40 00 - QUALITY REQUIREMENTS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements for quality assurance and quality control.
- B. Testing and inspecting services are required to verify compliance with requirements specified or indicated. These services do not relieve Contractor of responsibility for compliance with the Contract Document requirements.
 - 1. Specific quality-assurance and -control requirements for individual construction activities are specified in the Sections that specify those activities. Requirements in those Sections may also cover production of standard products.
 - 2. Specified tests, inspections, and related actions do not limit Contractor's other quality-assurance and -control procedures that facilitate compliance with the Contract Document requirements.
 - 3. Requirements for Contractor to provide quality-assurance and -control services required by Engineer, Owner, or authorities having jurisdiction are not limited by provisions of this Section.
 - 4. Specific test and inspection requirements are not specified in this Section.

1.3 DEFINITIONS

- A. Quality-Assurance Services: Activities, actions, and procedures performed before and during execution of the Work to guard against defects and deficiencies and substantiate that proposed construction will comply with requirements.
- B. Quality-Control Services: Tests, inspections, procedures, and related actions during and after execution of the Work to evaluate that actual products incorporated into the Work and completed construction comply with requirements. Services do not include contract enforcement activities performed by Engineer.
- C. Field Quality-Control Testing: Tests and inspections that are performed on-site for installation of the Work and for completed Work.
- D. Testing Agency: An entity engaged to perform specific tests, inspections, or both. Testing laboratory shall mean the same as testing agency.

- E. Experienced: When used with an entity or individual, "experienced" means having successfully completed a minimum of five previous projects similar in nature, size, and extent to this Project; being familiar with special requirements indicated; and having complied with requirements of authorities having jurisdiction.

1.4 CONFLICTING REQUIREMENTS

- A. Referenced Standards: If compliance with two or more standards is specified and the standards establish different or conflicting requirements for minimum quantities or quality levels, comply with the most stringent requirement. Refer conflicting requirements that are different, but apparently equal, to Engineer for a decision before proceeding.
- B. Minimum Quantity or Quality Levels: The quantity or quality level shown or specified shall be the minimum provided or performed. The actual installation may comply exactly with the minimum quantity or quality specified, or it may exceed the minimum within reasonable limits. To comply with these requirements, indicated numeric values are minimum or maximum, as appropriate, for the context of requirements. Refer uncertainties to Engineer for a decision before proceeding.

1.5 INFORMATIONAL SUBMITTALS

- A. Testing Agency Qualifications: For testing agencies specified in "Quality Assurance" Article to demonstrate their capabilities and experience. Include proof of qualifications in the form of a recent report on the inspection of the testing agency by a recognized authority.

1.6 REPORTS AND DOCUMENTS

- A. Test and Inspection Reports: Prepare and submit certified written reports specified in other Sections. Include the following:
 - 1. Date of issue.
 - 2. Project title and number.
 - 3. Name, address, and telephone number of testing agency.
 - 4. Dates and locations of samples and tests or inspections.
 - 5. Names of individuals making tests and inspections.
 - 6. Description of the Work and test and inspection method.
 - 7. Identification of product and Specification Section.
 - 8. Complete test or inspection data.
 - 9. Test and inspection results and an interpretation of test results.
 - 10. Record of temperature and weather conditions at time of sample taking and testing and inspecting.
 - 11. Comments or professional opinion on whether tested or inspected Work complies with the Contract Document requirements.
 - 12. Name and signature of laboratory inspector.
 - 13. Recommendations on retesting and reinspecting.
- B. Permits, Licenses, and Certificates: For Owner's records, submit copies of permits, licenses, certifications, inspection reports, releases, jurisdictional settlements, notices, receipts for fee

payments, judgments, correspondence, records, and similar documents, established for compliance with standards and regulations bearing on performance of the Work.

1.7 QUALITY CONTROL

- A. Contractor Responsibilities: Tests and inspections not explicitly assigned to Owner are Contractor's responsibility and will be required per the Alabama Department of Transportation Standard Specifications for Highway Construction (Latest Edition). Perform additional quality-control activities required to verify that the Work complies with requirements, whether specified or not.
1. Unless otherwise indicated, provide quality-control services specified and those required by authorities having jurisdiction. Perform quality-control services required of Contractor by authorities having jurisdiction, whether specified or not.
 2. Submit additional copies of each written report directly to authorities having jurisdiction, when they so direct.
- B. Testing Agency Responsibilities: Cooperate with Engineer and Contractor in performance of duties. Provide qualified personnel to perform required tests and inspections.
1. Notify Engineer and Contractor promptly of irregularities or deficiencies observed in the Work during performance of its services.
 2. Determine the location from which test samples will be taken and in which in-situ tests are conducted.
 3. Conduct and interpret tests and inspections and state in each report whether tested and inspected work complies with or deviates from requirements.
 4. Submit a certified written report, in duplicate, of each test, inspection, and similar quality-control service through Contractor.
 5. Do not release, revoke, alter, or increase the Contract Document requirements or approve or accept any portion of the Work.
 6. Do not perform any duties of Contractor.
- C. Associated Services: Cooperate with agencies performing required tests, inspections, and similar quality-control services, and provide reasonable auxiliary services as requested. Notify agency sufficiently in advance of operations to permit assignment of personnel. Provide the following:
1. Access to the Work.
 2. Incidental labor and facilities necessary to facilitate tests and inspections.
 3. Adequate quantities of representative samples of materials that require testing and inspecting. Assist agency in obtaining samples.
 4. Facilities for storage and field curing of test samples.
 5. Delivery of samples to testing agencies.
 6. Preliminary design mix proposed for use for material mixes that require control by testing agency.
 7. Security and protection for samples and for testing and inspecting equipment at Project site.

PART 2 - EXECUTION

2.1 TEST AND INSPECTION LOG

- A. Test and Inspection Log: Prepare a record of tests and inspections. Include the following:
 - 1. Date test or inspection was conducted.
 - 2. Description of the Work tested or inspected.
 - 3. Date test or inspection results were transmitted to Engineer.
 - 4. Identification of testing agency or special inspector conducting test or inspection.

2.2 REPAIR AND PROTECTION

- A. General: On completion of testing, inspecting, sample taking, and similar services, repair damaged construction and restore substrates and finishes.
 - 1. Provide materials and comply with installation requirements specified in other Specification Sections or matching existing substrates and finishes. Restore patched areas and extend restoration into adjoining areas with durable seams that are as invisible as possible. Comply with the Contract Document requirements for cutting and patching in Section 017300 "Execution."
- B. Protect construction exposed by or for quality-control service activities.
- C. Repair and protection are Contractor's responsibility, regardless of the assignment of responsibility for quality-control services.

END OF SECTION 014000

SECTION 01 74 19 - CONSTRUCTION WASTE MANAGEMENT AND DISPOSAL

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements for the following:
 - 1. Disposing of nonhazardous demolition and construction waste.

1.3 DEFINITIONS

- A. Construction Waste: Building and site improvement materials (including excess excavation) and other solid waste resulting from construction, remodeling, renovation, or repair operations. Construction waste includes packaging.
- B. Demolition Waste: Building and site improvement materials resulting from demolition or selective demolition operations.
- C. Disposal: Removal off-site of demolition and construction waste and subsequent sale, recycling, reuse, or deposit in landfill or incinerator acceptable to authorities having jurisdiction.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION

3.1 PLAN IMPLEMENTATION

- A. General: Implement approved waste management plan.
- B. Site Access and Temporary Controls: Conduct waste management operations to ensure minimum interference with roads, streets, walks, walkways, and other adjacent occupied and used facilities.

3.2 DISPOSAL OF WASTE

- A. General: Except for items or materials to be salvaged, recycled, or otherwise reused, remove waste materials from Project site and legally dispose of them in a landfill or incinerator acceptable to authorities having jurisdiction.

1. Except as otherwise specified, do not allow waste materials that are to be disposed of accumulate on-site.
 2. Remove and transport debris in a manner that will prevent spillage on adjacent surfaces and areas.
- B. Burning: Do not burn waste materials.
- C. Disposal: Remove waste materials from Owner's property and legally dispose of them.
- D. Any dewatering required of excavation, shall be included in the cost of excavation. Dewatering shall be done to the extent that the material can be safely removed from site and disposed of offsite (or onsite where directed by Engineer). Dewatering shall include erosion and sediment control measures.

END OF SECTION 017419

SECTION 01 78 39 - PROJECT RECORD DOCUMENTS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements for project record documents, including the following:
 - 1. Record Drawings.
 - 2. Record Specifications.
 - 3. Record Product Data.
 - 4. Miscellaneous record submittals.

1.3 CLOSEOUT SUBMITTALS

- A. Record Drawings: Comply with the following:
 - 1. Number of Copies: Submit one set(s) of marked-up record prints.

PART 2 - PRODUCTS

2.1 RECORD DRAWINGS

- A. Record Prints: Maintain one set of marked-up paper copies of the Contract Drawings and Shop Drawings, incorporating new and revised drawings as modifications are issued.
 - 1. Preparation: Mark record prints to show the actual installation where installation varies from that shown originally. Require individual or entity who obtained record data, whether individual or entity is Installer, subcontractor, or similar entity, to provide information for preparation of corresponding marked-up record prints.
 - a. Give particular attention to information on concealed elements that would be difficult to identify or measure and record later.
 - b. Accurately record information in an acceptable drawing technique.
 - c. Record data as soon as possible after obtaining it.
 - d. Record and check the markup before enclosing concealed installations.
 - 2. Content: Types of items requiring marking include, but are not limited to, the following:

- a. Dimensional changes to Drawings.
 - b. Revisions to details shown on Drawings.
 - c. Locations and depths of underground utilities.
 - d. Changes made by Change Order or Work Change Directive.
 - e. Changes made following Engineer's written orders.
 - f. Details not on the original Contract Drawings.
 - g. Field records for variable and concealed conditions.
 - h. Record information on the Work that is shown only schematically.
3. Mark the Contract Drawings and Shop Drawings accurately.
 4. Mark record sets with erasable, red-colored pencil. Use other colors to distinguish between changes for different categories of the Work at same location.
 5. Mark important additional information that was either shown schematically or omitted from original Drawings.
 6. Note Construction Change Directive numbers, alternate numbers, Change Order numbers, and similar identification, where applicable.
- B. Format: Identify and date each record Drawing; include the designation "PROJECT RECORD DRAWING" in a prominent location.
1. Record Prints: Organize record prints and newly prepared record Drawings into manageable sets. Bind each set with durable paper cover sheets. Include identification on cover sheets.
 2. Format: Annotated PDF electronic file.
 3. Record Digital Data Files: Organize digital data information into separate electronic files that correspond to each sheet of the Contract Drawings. Name each file with the sheet identification. Include identification in each digital data file.

2.2 MISCELLANEOUS RECORD SUBMITTALS

- A. Assemble miscellaneous records required by other Specification Sections for miscellaneous record keeping and submittal in connection with actual performance of the Work. Bind or file miscellaneous records and identify each, ready for continued use and reference.
- B. Format: Submit miscellaneous record submittals as scanned PDF electronic file(s) of marked-up miscellaneous record submittals.

PART 3 - EXECUTION

3.1 RECORDING AND MAINTENANCE

- A. Recording: Maintain one copy of each submittal during the construction period for project record document purposes. Post changes and revisions to project record documents as they occur; do not wait until end of Project.
- B. Maintenance of Record Documents and Samples: Store record documents and Samples in the field office apart from the Contract Documents used for construction. Do not use project record documents for construction purposes. Maintain record documents in good order and in a clean,

dry, legible condition, protected from deterioration and loss. Provide access to project record documents for Engineer's reference during normal working hours.

- C. It is the responsibility of the contractor to ensure submittals, records, and drawings are correctly prepared and stored.

END OF SECTION 017839

RESOLUTION NO. 1432-2024

A RESOLUTION DISPOSING OF SURPLUS PROPERTY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

WHEREAS, the City of Spanish Fort, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

WHEREAS, Ala. Code §11-43-56 (1975) authorizes the municipal governing body to dispose of unneeded personal property.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

Section 1. That the following personal property owned by the City of Spanish Fort, Alabama, is not needed for public or municipal purposes:

One Alco-Lite 35' Extension Ladder, Model No. PEL3-35, Serial No. 400563

Section 2. That the Mayor and City Clerk be and are hereby authorized and directed to dispose of the personal property owned by the City of Spanish Fort, Alabama, described in Section 1 above, by the best method to receive the most monies as adequate consideration for the personal property.

ADOPTED AND APPROVED this _____ *day of* _____, **2024**.

Michael M. McMillan
Mayor

ATTEST:

Rebecca A. Gaines
City Clerk

RESOLUTION NO. 1433-2024

A RESOLUTION AUTHORIZING THE MAYOR AND/OR CHIEF OF POLICE OF THE CITY OF SPANISH FORT, ALABAMA, TO MAKE APPLICATION FOR THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT, ADMINISTERED BY THE ADECA LAW ENFORCEMENT AND TRAFFIC SAFETY DIVISION

WHEREAS, the Alabama Department of Economic and Community Affairs Law Enforcement and Traffic Safety Division serves as the Alabama State Administering Agency for the Edward Byrne Memorial Justice Assistance Grant consisting of funds made available through the United States Department of Justice Office of Justice programs; and

WHEREAS, the City of Spanish Fort Police Department desires to apply for funding through the Edward Byrne Memorial Justice Assistance Grant to be used for the purposes of local law enforcement equipment as authorized by the grant program; and

WHEREAS, the application must be submitted for and on behalf of the City by its Mayor and/or its Chief of Police, and the latest grant application deadline August 9, 2024; and

WHEREAS, the agreement shall be executed in the name of the City for and on behalf of the City by its Mayor and/or the Chief of Police; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

SECTION 1. The City Council hereby approves and authorizes a grant application in the amount of up to the maximum award of \$100,000.00 to be filed by the Mayor and the Chief of Police to make an application for the Edward Byrne Memorial Justice Assistance Grant funding for the purpose of purchasing needed equipment for the City of Spanish Fort Police Department. The grant requirements and solicitation is attached as Exhibit The Mayor and/or the Police Chief are hereby authorized to execute any documents deemed necessary to secure such funding assistance.

SECTION 2. This Resolution shall become effective immediately upon its adoption.

ADOPTED and APPROVED this ____ day of _____, 2024.

Michael M. McMillan
Mayor

ATTEST:

Rebecca A. Gaines, CMC
City Clerk

RESOLUTION NO. 1435-2024

**A RESOLUTION AMENDING THE SPANISH FORT POLICE DEPARTMENT
POLICY MANUAL**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPANISH
FORT, ALABAMA, AS FOLLOWS:**

SECTION 1. The City Council of the City of Spanish Fort has established and adopted certain policies and procedures for the Police Department of the City of Spanish Fort, and the City Council hereby adopts and approves certain amendments to the Spanish Fort Police Department Policy Manual, as approved by the Mayor.

SECTION 2. The Spanish Fort Police Department Policy Manual may be amended from time to time as approved by the Mayor.

SECTION 3. No part of this Resolution should be construed to exempt any Police Department Personnel from adhering to the City of Spanish Fort Personnel Manual as adopted in Resolution No. 1239-2022, or any amendments thereto.

SECTION 4. If any part, section or subdivision of this Resolution shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Resolution, which shall continue in full force and effect notwithstanding such holding.

SECTION 5. Any resolution heretofore adopted by the City Council of the City of Spanish Fort, Alabama, which is in conflict with this Resolution is hereby repealed to the extent of such conflict. Notwithstanding the foregoing, Resolution No. 1239-2022, as amended, shall continue in full force and effect, and the more stringent standards or requirements contained either in the Personnel Manual or the Police Policy and Procedure Manual shall govern. Except as expressly amended herein, all terms, conditions and provisions contained in the Spanish Fort Police Department Policy Manual shall remain in full force and effect.

ADOPTED AND APPROVED this ___ day of _____, 2024.

Michael M. McMillan
Mayor

ATTEST:

Rebecca A. Gaines, CMC
City Clerk

RESOLUTION NO. 1436-2024

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH SASSER ELECTRICAL SERVICES, INC., FOR INSTALLATION OF LED LIGHTING AT THE SPIRIT PARK TENNIS COURTS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

SECTION 1. The City Council hereby authorizes the Mayor to enter into an agreement in the amount of \$37,510.00, with Sasser Electrical Services, Inc., for the installation of LED lighting at the tennis courts at Spirit Park, and \$30,451.00 for the installation of LED lighting along the sidewalk at Spirit Park. A copy of the proposals for the proposed work are attached hereto as Exhibits 1 and 2, subject to any changes approved by the Mayor.

SECTION 2. This Resolution shall become effective immediately upon its adoption.

ADOPTED AND APPROVED this ____day of_____, 2024.

Michael M. McMillan
Mayor

ATTEST:

Rebecca A. Gaines, CMC
City Clerk

Exhibit 1 to Resolution No. 1436-2024



Sasser Electrical Services, Inc.

City of Spanish Fort/ Public Works
7361 Spanish Fort Blvd
Spanish Fort, AL 36527

☎ (251) 513-0482
✉ publicworks@cityofspanishfort.com

| | |
|-----------------|--------------------|
| ESTIMATE | #520 |
| ESTIMATE DATE | Sep 27, 2023 |
| SERVICE DATE | Sep 18, 2023 |
| EXPIRATION DATE | Oct 27, 2023 |
| TOTAL | \$37,510.00 |

SERVICE ADDRESS

30338 Waites Ln
Spanish Fort, AL 36527

CONTACT US

11690 Halcyon Loop
Daphne, AL 36526

☎ (251) 210-7045
✉ Info@sasserelectric.com

ESTIMATE

| Services | qty | unit price | amount |
|---|------|------------|-------------|
| Miscellaneous - Scope Of Work | 62.0 | \$605.00 | \$37,510.00 |
| Replace existing 1000w metal halide fixtures over the tennis courts to new LED equivalent fixture heads. Keeping existing poles. | | | |

Services subtotal: \$37,510.00

Total **\$37,510.00**

Exhibit 2 to Resolution No. 1436-2024



Accounting

Hello, this is your estimate

Location: undefined, undefined, undefined, undefined

PROJECT ID
18765356

Spirit Park Walkway Lights

Your Price

\$30,451.00

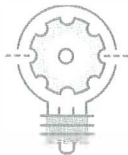
Accept Estimate

Summary

Relocated power and install one 8 foot LED light post on the opposite side of the side walk from the larger existing post light. Split the distance between the larger post light and the next existing

Accept Estimate

Walkway lighting



Your Price
\$30,451.00

Walkway Lighting

| | |
|----------|-------------|
| Subtotal | \$30,451.00 |
| Tax | \$0.00 |

Total

\$30,451.00

POWERED BY  ServiceTitan

[Contact Us](#)

RESOLUTION NO. 1437-2024

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH
MDH FOUNDATION REPAIR FOR LEVELING OF SIDEWALKS AT SPIRIT PARK IN THE
CITY OF SPANISH FORT**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT,
ALABAMA, AS FOLLOWS:**

SECTION 1. The City Council hereby authorizes the Mayor to enter into an agreement in the amount of \$4500.00, with MDH Foundation Repair, for the leveling of sidewalks at Spirit Park in the City of Spanish Fort. A copy of the proposal for the proposed work is attached hereto as Exhibit 1, subject to any changes approved by the Mayor.

SECTION 2. This Resolution shall become effective immediately upon its adoption.

ADOPTED AND APPROVED this ___ day of _____, 2024.

Michael M. McMillan
Mayor

ATTEST:

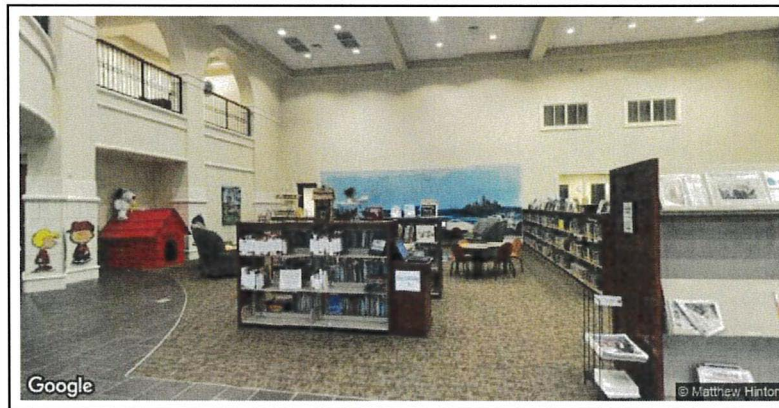
Rebecca A. Gaines, CMC
City Clerk



Prepared for:

**City of Spanish Fort
Shannon Burroughs
7361 Spanish Fort Blvd
Spanish Fort, AL 36527**

(251) 513-0482 | publicworks@cityofspanishfort.com



Evaluated on:

Thursday, June 27, 2024

Evaluated By:

Shannon Reichart

(251) 375-0565 | shannon@mdhconstructionservices.com

**MDH Foundation Repair
108 5th Street
Daphne, AL 36526
Main (251) 333-9355
www.MDHFoundationRepair.com**

Scope of Work

We would like to thank you for giving us the opportunity to earn your business. Our belief is to approach projects using a comprehensive plan that corrects the source of the problems and the symptoms they have caused. This method provides a quality solution that lasts much longer than addressing only portions of the issues.

After performing a thorough examination of your property, we have prepared the following estimate and diagram specifically customized to meet the needs of your project. We believe this will provide a detailed explanation of our solution as well as the associated costs.

Sidewalk Leveling

Concrete

It is the intention of MDH to bring any concrete slabs that have settled back to their original position in relationship to the surrounding concrete slabs. We will work to make the slabs flat, which may or may not be true to level.

However, in some instances where MDH is not able to fully lift the slab, our services will assist in ensuring minimal concrete settlement in the future. Our solution is designed to support the slab and prevent future settlement by compacting and treating the soil below the concrete.

| Product | Quantity |
|--|----------|
| <p>Concrete: StrongHold® Foam Injection</p> <p><i>Inject StrongHold® closed-cell polyurethane foam under the concrete, as depicted on the drawing. Our main goal will be to support the sinking concrete. We may be able to achieve some lift. We will monitor the lift and stop if new damage is occurring to the slab.</i></p> <p><i>There will be small 1/2 holes drilled in the concrete to inject the foam. We will fill the holes with cement after we are finished.</i></p> | 2 |

Notes

This proposal to the City of Spanish Fort will be to provide concrete foam injection services to lift and support areas around Spirit Park sidewalks that have eroded over time. There are areas by the tennis court parking lot that have actually raised due to tree roots; these areas will be out of scope for this proposed work.

A deposit of 50% will be collected prior to the work begins; the remaining 50% payment balance will be due upon completion.

This scope of work by MDH Foundation Repair will include the following areas:

- Sidewalk entrance to the park by the storm drain (area 5' by 10', down 1.5")
- Sidewalk by manhole entrance (area 5' by 16', down 1.5")
- Sidewalk by storm drain (down 0.5" to 2.0")
- Sidewalk by upper drop off area (5' by 25' area, down 0.5" to 1.0")
- Sidewalk area by tree (5' by 15' area)
- Sidewalk area by Tennis court #5 & 7 where the courts meet
- Area by Tennis court #10 (5' by 10' area, down 1.0")
- Area where sidewalk T's to tennis courts 5&7 to the concession stand (5' by 20' area)
- Sidewalk by Tennis court #3 entrance (5' by 5' area)
- Sidewalk by Tennis court #1 (5' by 10' area)

The intention of this proposal is to address the areas currently in the park that have been painted yellow for trip hazard awareness.

Costs

Section: Sidewalk Leveling

| Description | Quantity | Cost |
|---|----------|-------------------|
| Concrete: StrongHold® Foam Injection ¹ | 2.00 | \$4,500.00 |
| Total Cost: | | \$4,500.00 |

¹ Minimum 100 lbs

Total: \$4,500.00

Payment Terms

| | | |
|---------------|----------------------------------|------------|
| Deposit | <i>Due after bid acceptance</i> | \$2,250.00 |
| Final Payment | <i>Due at project completion</i> | \$2,250.00 |