



**TAKE NOTICE THAT A REGULAR MEETING
OF THE BOARD OF COMMISSIONERS
OF THE CITY OF PHARR, TEXAS
WILL BE HELD AT CITY HALL, COMMISSIONERS' ROOM,
118 S. CAGE BLVD., 2ND FLOOR, PHARR, TEXAS
COMMENCING AT 4:00 PM ON
MONDAY, APRIL 18, 2022**

The City of Pharr has called this meeting as allowed pursuant to Texas law, city charter, and city ordinances. The governing body may recess from day to day when it does not complete consideration of a particularly long subject as authorized by law. All persons desiring to address the governing body must register with the presiding city clerk prior to the scheduled meeting.

1. CALL TO ORDER:

- A) Roll call and possible action on the excusing of any absent member of the governing board.
- B) Pledge of Allegiance/Invocation

2. PROCLAMATIONS:

- A) Proclamation proclaiming April 30, 2022 as Children's Advocacy Center of Hidalgo County Day. (ADMINISTRATION)
- B) Proclamation proclaiming April 24 - 30, 2022 as National Crime Victim's Rights Week. (POLICE)
- C) Proclamation proclaiming April 2022 as Child Abuse Prevention Month. (POLICE)
- D) Proclamation proclaiming April 2022 as Sexual Assault Awareness Month. (POLICE)

3. PUBLIC TESTIMONY: (Ordinance No. O-2019-45). *A person intending on addressing the governing body may speak at a scheduled meeting of the governing body following registration with the presiding clerk and prior to the scheduled meeting. A registered speaker may speak only on items on the agenda and may not exceed 1.5 minutes when addressing the board regarding an agenda item. A registered speaker may not donate time to another speaker. A sign-in form for public testimony shall be promulgated by the presiding clerk and be made available at the city clerk's office. A person may sign up for public testimony beginning at the time the agenda is posted for the meeting. A person may not sign up later than one hour before the posted meeting is scheduled to begin. No registered speaker may be allowed to speak regarding an item once the public testimony portion of the agenda has ended.*

AGENDA REGULAR MEETING
April 18, 2022

4. PUBLIC HEARINGS: *(Ordinance No. O-2019-31). A registered speaker during the public hearing may not exceed 1.5 minutes when addressing the board. A sign-in form for participation in public a hearing shall be promulgated by the presiding clerk and be made available at the city clerk's office. The public hearing sign-in form shall include the person or entity's name, address, telephone number, other contact information, organization if applicable, and other notices, authorizations, and acknowledgements as may be allowed by law from time to time. No registered speaker may be allowed to address the governing body once the public hearing has closed.*

A) Public hearing on development services cases.

5. CITY MANAGER'S REPORTS: *(City Manager's Administrative Reports and discussion, if any, with governing body. The City Manager may also assign a designated spokesperson for any particular listed topic)*

A) Submission of Sales Tax Collection Report for April 2022.

B) Submission of Property Tax Collection Report for March 2022.

6. CONSENT AGENDA: *(All items listed under consent Agenda are considered to be routine and non-controversial by the Governing Body and will be enacted by one motion. Any Commissioner may remove items from the consent agenda by making such request prior to a motion and vote on the Consent Agenda)*

A) Consideration and action, if any, on Ordinance amending Ordinance No. O-2019-32 increasing the membership of the Keep Pharr Beautiful Committee from five (5) to seven (7) members. **(3rd and Final Reading)** (PARKS)

B) Consideration and action, if any, on Ordinance amending Ordinance O-2021-44 for modifications to the fee schedule for municipal fiber optic services. **(2nd Reading)** (IT)

C) Consideration and action, if any, authorizing City Manager to advertise for bids for City-Wide Ditch hydroseeding. (PURCHASING)

D) Consideration and action, if any, authorizing City Manager to advertise for proposals for the City-Wide Debt Collection Service. (PURCHASING)

E) Consideration and action, if any, on Development Services Cases:

1. Howard Adams, d/b/a, South Texas Wastewater LLC., has filed with the Planning and Zoning Commission a request for a Change of Zone from General Business District (C) to Heavy Commercial District (H-C). The property is legally described as being Lots 5 & 6, Johnstone Supply Subdivision, Pharr, Hidalgo County, Texas. The property is physically located at 931 West Sharm Drive. **COZ#220317** (DEVELOPMENT SERVICES)

AGENDA REGULAR MEETING
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2. Melden & Hunt, Inc., representing Blu-Man Investments, LLC., has filed with the Planning and Zoning Commission a request for a Change of Zone from Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I). The property is legally described as being 46.20-acres, more or less, out of Lots 383 and 384, Kelly-Pharr Subdivision, Pharr, Hidalgo County, Texas. The property is physically located within the 900 and 1000 Block of East Hi-Line Road. **COZ#220318** (DEVELOPMENT SERVICES)

3. Melden & Hunt, Inc., representing Jaime and Sandra G. Galpern, owners, has filed with the Planning and Zoning Commission a request for a Change of Zone from Agricultural and/or Open Space District (A-O) to General Business District (C). The property is legally described as being 0.120-acre, more or less, out of Lot 8, Block 12, A.J. McColl Subdivision, Pharr, Hidalgo County, Texas. The property is physically located within the 7600 Block of South Jackson Road. **COZ#220319** (DEVELOPMENT SERVICES)

REGULAR AGENDA - OPEN SESSION:

7. ORDINANCES AND RESOLUTIONS:

A) Consideration and action, if any, on Ordinance amending Ordinance O-2018-04 to modify the fee schedule to add the Pharr Natatorium located at 3001 N. Cage. **(1st Reading)** (PARKS)

B) Consideration and action, if any, on Resolution concerning AEP Texas Distribution Cost Recover Factors (DCRF) application and authorizing legal counsel to intervene and participate in the proceeding. (ADMINISTRATION)

8. ADMINISTRATIVE:

A) Discussion with the Board of Commissioners on the City of Pharr's Strategic Plan 2022-2027. (OSE)

9. CONTRACTS/AGREEMENTS:

A) Consideration and action, if any, authorizing City Manager to negotiate and enter into a contract with JSJ Rodriguez, Inc. DBA Tele-pro Communications from Mission, Texas for residential fiber installation labor services for TeamPharr.Net - Phase III South Pharr Build using a per-home unit cost through The Interlocal Purchasing System (TIPS) Purchasing Cooperative Contract number 200105. (IT)

B) Consideration and action, if any, authorizing City Manager to negotiate and enter into a contract with STX Underground LLC from Brownsville, Texas for construction of the TeamPharr.Net Fiber Optic Network - Central Pharr Phase IV Project in the amount of \$12,169,621.35 through The Interlocal Purchasing System (TIPS) Purchasing Cooperative Contract number 200201-3132. (IT)

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C) Consideration and action, if any, authorizing City Manager to enter into a master services agreement with Smartcom Telephone, LLC for maintaining data and voice services. (IT)

10. CLOSED SESSION: *In accordance with Chapter 551 of the Texas Gov't. Code, the Pharr Board of Commissioners hereby gives notice that it may meet in a closed (non-public) executive session to discuss the items listed on the public portion of the meeting agenda in accordance with the following below:*

Pursuant to Section 551.071, the Board may convene in a closed, non-public meeting with its attorney and discuss any matters related to **legal advice on pending or contemplated litigation, settlement offer, and/or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.** The City and its attorney may also discuss such issues with the appropriate staff so as to obtain necessary and relevant information so that such discussion is informative and developed.

Pursuant to Section 551.072, the Board may convene in a closed, non-public meeting to discuss any matters related to **real property and deliberate the purchase, exchange, lease, or value of real property as such would be detrimental to negotiations between the City and a third party in an open meeting.** The City and its attorney may also discuss such issues with the appropriate staff so as to obtain necessary and relevant information so that such discussion is informative and developed.

Pursuant to Section 551.074, the Board may convene in a closed, non-public meeting to discuss any matters related to **appointment, employment, evaluation, reassignment, duties and discipline or dismissal of a public officer or employee and to hear any complaints or charges against an officer or employee.** The City and its attorney may also discuss such issues with the appropriate staff including members so as to obtain necessary and relevant information so that such discussion is informative and developed.

Pursuant to Section 551.076, the Board may convene in a closed, non-public meeting to discuss any matters on the **deployment, or specific occasions for implementation, of security personnel or devices.** The City and its attorney may also discuss such issues with the appropriate staff so as to obtain necessary and relevant information so that such discussion is informative and developed.

Pursuant to Section 551.084, the Board may convene in a closed, non-public meeting to discuss any matters involving an **investigation and may exclude a witness from hearing during the examination of another witness in the investigation.** The City and its attorney may also discuss such issues with the appropriate staff so as to obtain necessary and relevant information so that such discussion is informative and developed.

Pursuant to Section 551.087, the Board may convene in a closed, non-public meeting to discuss any matters regarding **economic development issues.** The City and its attorney may also discuss such issues with the appropriate staff so as to obtain necessary and relevant information so that such discussion is informative and developed.

11. RECONVENE: *into Regular Session and consider action, if necessary, on any items(s) discussed in closed session.*

12. ADJOURNMENT:

NOTICE OF ASSISTANCE AT THE PUBLIC MEETING

City Hall is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Clerk's Office at 956-402-4100 Ext. 1016 / 1007 or FAX 956-702-5313 or E-mail hilda.pedraza@pharr-tx.gov and imelda.barrera@pharr-tx.gov for further information. Braille is not available.

I, the undersigned authority, do hereby certify that the above notice of said Regular Meeting of the City Commission of the City of Pharr was posted on the bulletin board at City Hall and on the City's web page at www.pharr-tx.gov. This Notice was posted on the 14th day of April 2022 at 4:00 p.m. and will remain posted continuously for at least 72 hours preceding the scheduled time of said Meeting, in compliance with Chapter 551 of the Government Code, Vernon's Texas Codes, Annotated (Open Meetings Act).



WITNESS MY HAND AND SEAL, this 14th day of April 2022


HILDA PEDRAZA, TRMC / CMC
CITY CLERK

I certify that the attached notice and agenda of items to be considered by the City Commission was removed from the bulletin board of City Hall on the _____ day of _____, 20____ by,

Title: _____

Proclamation



WHEREAS, the Children's Advocacy Center of Hidalgo and Starr Counties is a non-profit organization that was established in the year 2000 with a mission to reduce the emotional trauma of child abuse victims, provide community education about the prevention of child abuse and to assist in the effective prosecution of those who perpetrate crimes against children; and

WHEREAS, the Children's Advocacy Center of Hidalgo and Starr Counties is one of 800 Children's Advocacy Centers nationwide, one of 70 in Texas and the first child-focused facility and community-based program of its kind in Hidalgo and Starr Counties; and

WHEREAS, the Children's Advocacy Center of Hidalgo and Starr Counties, gives hope, healing and justice to victims of child abuse by providing immediate crisis intervention, forensic interviews, forensic exams, family advocacy, mental health services, and community education in a child-friendly, non-institutional environment where young victims are not afraid to tell their story; and

WHEREAS, to raise awareness and funds for the organization, the Children's Advocacy Center of Hidalgo and Starr Counties, is having the 12th Annual Vinos! at the McAllen Convention Center on Saturday, April 30, 2022, featuring delicious food, fine wines and amazing entertainment by Premier Showband Satellite and The Renaissance Rockers; and

WHEREAS, the City of Pharr supports this event to raise funds to support the Children's Advocacy Center of Hidalgo and Starr Counties in their mission to stop child abuse, one child at a time and give hope, healing and justice to victims of child abuse.

NOW THEREFORE, I, Ambrosio Hernandez, Mayor of the City of Pharr, Texas by virtue of the authority vested in me and on behalf of the Mayor and the City Commission, do hereby proclaim April 30, 2022 as:

“Children's Advocacy Center of Hidalgo County Day”

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Pharr to be affixed on this 18th day of April 2022.

CITY OF PHARR

Ambrosio Hernandez, Mayor

ATTEST:

Hilda Pedraza, City Clerk

Proclamation



WHEREAS, the victims' rights movement has resulted in the passage of laws at the local, state, and federal levels that established essential rights for victims; and

WHEREAS, crime victims' rights acts passed in Texas and at the federal level have provided victims with ways to participate meaningfully throughout the criminal justice process; and

WHEREAS, the rights of crime victims are best protected when all participants in the criminal justice process—not only victims—are appropriately educated about victims' rights; and

WHEREAS, supporting victims of crime is crucial to the U.S. justice system because our support honors the experiences of victims and allows them to find autonomy and empowerment through achieving self-defined goals; and

WHEREAS, the accomplishments of the victims' rights movement—achieved through compassion and collaboration are built on the courageous advocacy of individual victims and their families across the country—inspire hope for future progress and greater healing; and

WHEREAS, National Crime Victims' Rights Week provides an opportunity to recommit ensuring that accessible, appropriate, and trauma-informed services are offered to all victims of crime; and

WHEREAS, City of Pharr Texas is hereby dedicated to strengthening victims and survivors in the aftermath of crime, building resilience in our communities and our victim service providers, and bringing hope and healing to all victims and survivors.

NOW THEREFORE, I, Ambrosio Hernandez, Mayor of the City of Pharr, Texas, by virtue of the authority vested in me and on behalf of the Mayor and the City Commission, do hereby proclaim the week of April 24 – 30, 2022 as:

“National Crime Victims' Rights Week”

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Pharr to be affixed on this 18th day of April 2022.

CITY OF PHARR

Ambrosio Hernandez, Mayor

ATTEST:

Hilda Pedraza, City Clerk

Proclamation



WHEREAS, child abuse prevention is a community responsibility and finding a solution depends on the involvement of all people; and

WHEREAS, child abuse comes in different forms, it includes physical abuse, neglect and abandonment, emotional abuse and sexual abuse. Texas law requires that any person suspecting that a child has been abused or neglected must immediately make a report; and

WHEREAS, in the fiscal year 2021 there were 286,314 reports of child abuse filed with the Texas department of Family and Protective Services on which 43,000 were confirmed victims of child abuse and neglect in the United States including 199 child fatalities; and

WHEREAS, in Hidalgo County there were 7,967 reports of child abuse. Of those, approximately 5,895 are child abuse and neglect investigations, 1,133 were confirmed cases of child abuse; and

WHEREAS, effective child abuse prevention programs succeed because of the partnership among agencies, schools, religious organization, law enforcement agencies and the business community; and

WHEREAS, the City of Pharr encourages everyone in the community to become more aware on child abuse prevention awareness by raising and educating our children in a loving and secure environment.

NOW THEREFORE, I, Ambrosio Hernandez, Mayor of the City of Pharr, Texas, by virtue of the authority vested in me and on behalf of the Mayor and the City Commission, do hereby proclaim the month of April 2022 as:

“Child Abuse Prevention Month”

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Pharr to be affixed on this 18th day of April 2022.

CITY OF PHARR

Ambrosio Hernandez, Mayor

ATTEST:

Hilda Pedraza, City Clerk

Proclamation



WHEREAS, April is Sexual Assault Awareness Month, a time to draw attention to the problem of sexual assault and educate individuals and communities about how to prevent it; and

WHEREAS, sexual harassment, abuse and assault are a widespread problem. In the United States one in five women and one in sixty-seven men have been raped at some point in their lives and one in four girls and one in twenty boys are sexually abused by the age of seventeen; and

WHEREAS, sexual harassment, assault and abuse can happen anywhere. Now more than ever, with online technologies, individuals engage in cyberbullying, harassment and sexual abuse, which are unlawful and unwanted behaviors; and

WHEREAS, each of us have the power to change that. Together we can make a difference to build an inclusive, safe and respectful community that thrives online and offline; and

WHEREAS, 2022 marks the twenty-first anniversary of Sexual Assault Awareness Month, and the theme of this year is “Building Safe Online Spaces Together”; and

WHEREAS, we can build online communities free from sexual harassment, abuse, and assault by practicing digital consent, intervening when we see harmful behaviors, and promoting online communities that value inclusion, safety and respect.

NOW THEREFORE, I, Ambrosio Hernandez, Mayor of the City of Pharr, Texas, by virtue of the authority vested in me and on behalf of the Mayor and the City Commission, do hereby proclaim the month of April 2022 as:

“Sexual Assault Awareness Month”

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Pharr to be affixed on this 18th day of April 2022.

CITY OF PHARR

Ambrosio Hernandez, Mayor

ATTEST:

Hilda Pedraza, City Clerk



AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 4.A.

DATE SUBMITTED:

MEETING DATE: April 18, 2022

FROM: Hilda Pedraza, City Clerk

DEPARTMENT: Administration

DIRECTOR:

Agenda Item: Public hearing on development services cases

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue:

Fiscal Consideration:

Staff Recommendation:

Alternatives:

Exclude Material from Public Packet? No

Reason:

ROUTING:

Hilda Pedraza

Karla Saavedra

Patricia Rigney

City Management Office

Created -



AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 5.A.

DATE SUBMITTED: April 11, 2022

MEETING DATE: April 18, 2022

FROM: Karla Saavedra, Finance Director

DEPARTMENT: Finance

DIRECTOR: Karla Saavedra

Agenda Item: Submission of Sales Tax Collection Report for April 2022.

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue:

SALES TAX HIGHLIGHTS

The City of Pharr shows an INCREASE of 22.09% Month-to-Month compared to last Year 2021 and overall 16.14% growth compared to last year's collections.

Please feel free to contact me should the need arise. I am at extension 1907.
THANK YOU

Fiscal Consideration:

n/a

Staff Recommendation: Approve

Alternatives: n/a

Exclude Material from Public Packet? No

Reason: n/a

ROUTING:

Karla Saavedra

Karla Saavedra

Fabiola Sanchez

City Management Office

Created/Initiated - 4/11/2022

Approved - 4/11/2022

Approved - 4/13/2022

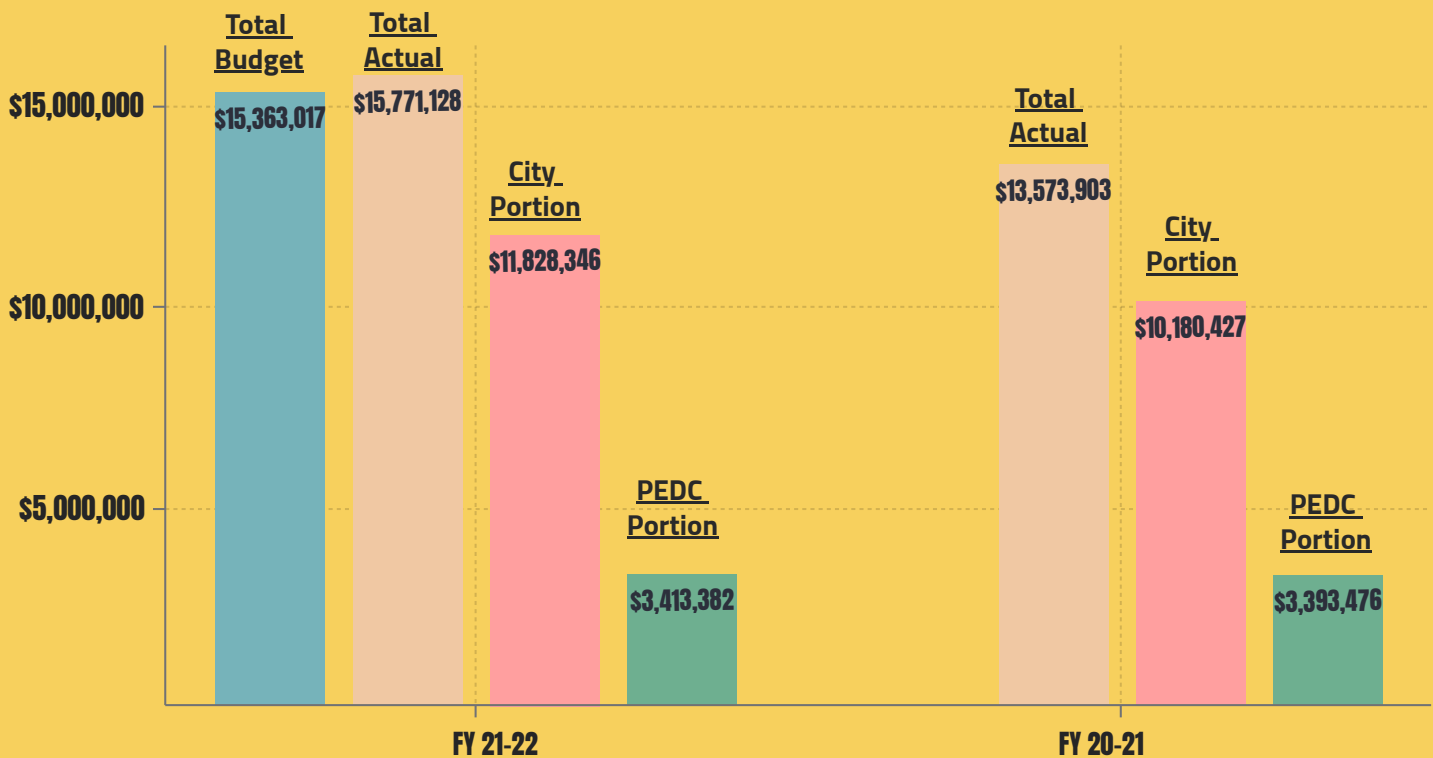
Final Approval - 4/14/2022



CITY OF PHARR SALES TAXES

as of April 2022
FY 2021-2022

SALES TAXES COLLECTIONS Cash Basis by Fiscal Year



22.09% YTD

Increase in Sales Tax from Last Year*



16.14%

Compared to April 2021 Cash Basis.

Ranked No. 7

compared to neighbor Cities

*Growth is based on Calendar Year per Texas State Comptroller

CREATED BY

Karla Saavedra, CGFO





AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 5.B.

DATE SUBMITTED: April 13, 2022

MEETING DATE: April 18, 2022

FROM: Karla Saavedra, Finance Director

DEPARTMENT: Finance

DIRECTOR: Karla Saavedra

Agenda Item: Submission of Property Tax Collection Report for March 2022.

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue: Current Collections

Current Tax Collections as of March 2022 are **\$23,867,277 or 92.59 %** collected out of this year's levy . This is .65% more than last year's collection rate.

Delinquent Tax

Delinquent Tax Collections as of March 2022 are \$537,316, which is 19.53% collected out of previous year's tax rolls. This is an increase of 1.92% compared to last year.

Fiscal Consideration: n/a

Staff Recommendation:

Alternatives: n/a

Exclude Material from Public Packet? No

Reason: n/a

ROUTING:

Karla Saavedra

Karla Saavedra

Fabiola Sanchez

Patricia Rigney

City Management Office

Created/Initiated - 4/13/2022

Approved - 4/13/2022

Approved - 4/14/2022

Approved - 4/14/2022

Final Approval - 4/14/2022

**PABLO "PAUL" VILLARREAL JR., ASSESSOR & COLLECTOR
CITY OF PHARR TAXES COLLECTED FOR:
MARCH 2022**

COMPARATIVE RATE OF COLLECTIONS

CITY OF PHARR CPR (33)	ORIGINAL TAX LEVY	COLLECTED TO DATE	DROPPED YRS AFTER PURGE	MODIF. TO DATE	TAXES OUTSTANDING	PERCENT 2021/2022	COLLECTED 2020/2021
2021 TAX ROLL	25,143,252.18	23,867,277.00		634,680.54	1,910,655.72	92.59%	91.94%
2020 & PRIOR YRS	2,751,791.27	537,316.32		(74,251.24)	2,140,223.71	20.07%	17.53%
ROLLBACK	6,958.36	15,952.43		8,994.07	-	100.00%	72.71%
TOTALS	27,902,001.81	24,420,545.75	-	569,423.37	4,050,879.43		

BREAKDOWN OF TAX COLLECTIONS AND FEES FOR THE MONTH OF MARCH 2022

	CITY OF PHARR	MONTHLY MODIFICATIONS
CURRENT YEAR-BASE TAX	621,737.55	(9,377.14) CURRENT
CURRENT YEAR-P&I	48,845.59	
PRIOR YEARS-BASE TAX	104,367.46	(1,266.61) PRIOR
PRIOR YEARS-P&I	43,154.00	
ROLLBACK	-	- ROLLBACK
ROLLBACK P&I	-	
ATTORNEY FEES	17,809.39	PURGED
TOTAL COLLECTIONS	835,913.99	(10,643.75)
LESS TRANSFERRED	616,405.35	
LESS IN TRANSIT	213,653.73	
LESS DUE TO HCAD COMM. FEE	66.91	
LESS DUE TO CO TREASURER	5,788.00	
BALANCE	-	

*****AFFIDAVIT*****

I, PABLO "PAUL" VILLARREAL JR., ASSESSOR-COLLECTOR OF TAXES FOR THE CITY OF PHARR, DO SOLEMNLY SWEAR THAT THE ABOVE STATEMENT OF TAXES COLLECTED BY ME FOR THE MONTH OF MARCH 2022 IS CORRECT.

Pablo (Paul) Villarreal
ASSESSOR-COLLECTOR OF TAXES FOR CITY OF PHARR, TEXAS

SWORN AND SUBSCRIBED BEFORE ME THIS 11TH DAY OF APRIL 2022 A.D.

Rita Rebecca Vargas
NOTARY PUBLIC, HIDALGO COUNTY, TEXAS



PABLO "PAUL" VILLARREAL JR., ASSESSOR & COLLECTOR
CITY OF PHARR
TAX COLLECTION REPORT
FOR THE MONTH OF MARCH 2022

<u>AD VALOREM - CITY OF PHARR</u>	<u>2021-2022</u>	<u>2020-2021</u>	<u>DIFFERENCE</u>
<u>2021 CURRENT</u>			
ORIGINAL LEVY	25,143,252.18	23,908,465.77	1,234,786.41
MODIFICATIONS	634,680.54	222,347.75	412,332.79
CURRENT LEVY	25,777,932.72	24,130,813.52	1,647,119.20
CURRENT COLLECTIONS THIS MONTH	621,737.55	777,119.48	(155,381.93)
CURRENT COLLECTIONS TO DATE	23,867,277.00	22,185,964.93	1,681,312.07
OUTSTANDING TO DATE	1,910,655.72	1,944,848.59	(34,192.87)
PERCENT COLLECTED/ORIGINAL	94.93%	92.80%	2.13%
PERCENT COLLECTED/MODIFIED	92.59%	91.94%	0.65%
TOTAL COLLECTIONS FISCAL YEAR	23,867,277.00	22,185,964.93	
<u>DELINQUENT</u>			
ORIGINAL LEVY	2,751,791.27	2,737,130.81	14,660.46
MODIFICATIONS	(74,251.24)	12,231.48	(86,482.72)
DELINQUENT LEVY	2,677,540.03	2,749,362.29	(71,822.26)
DELINQUENT COLLECTIONS THIS MONTH	104,367.46	94,690.65	9,676.81
DELINQUENT COLLECTIONS TO DATE	537,316.32	481,973.47	55,342.85
OUTSTANDING TO DATE	2,140,223.71	2,267,388.82	(127,165.11)
PERCENT COLLECTED/ORIGINAL	19.53%	17.61%	1.92%
PERCENT COLLECTED/MODIFIED	20.07%	17.53%	2.54%
TOTAL COLLECTIONS FISCAL YEAR	537,316.32	481,973.47	
<u>ROLLBACK</u>			
ORIGINAL LEVY	6,958.36	14,669.19	(7,710.83)
MODIFICATIONS	8,994.07	0.00	8,994.07
ROLLBACK LEVY	15,952.43	14,669.19	1,283.24
ROLLBACK COLLECTIONS THIS MONTH	3,984.64	7,764.65	(3,780.01)
ROLLBACK COLLECTIONS TO DATE	15,952.43	10,666.47	5,285.96
OUTSTANDING TO DATE	0.00	4,002.72	(4,002.72)
PERCENT COLLECTED/ORIGINAL	229.26%	72.71%	156.55%
PERCENT COLLECTED/MODIFIED	100.00%	72.71%	27.29%
TOTAL COLLECTIONS FISCAL YEAR	15,952.43	10,666.47	

PABLO (PAUL) VILLARREAL, JR., TAX ASSESSOR/COLLECTOR
CITY OF PHARR
TAX COLLECTIONS FOR MONTH OF: MARCH 2022

33 - CPR

REPORT DATE	CURR BASE	CURR P&I	CURR RB	CURR RB P&I	PRIOR BASE	PRIOR P&I	PRIOR RB	RB P&I	ATTY FEES	ATTY RBFEES	TOTAL	TOTAL TRANSF	DIFF.	DATE OF TRANSF.
1-Mar	60,336.76	4,273.22			3,489.13	1,154.48			639.79		69,893.38		69,893.38	
2-Mar	23,427.46	1,506.75			3,014.50	1,807.47			101.76		29,857.94		29,857.94	
3-Mar	25,654.47	1,962.37			706.88	314.35			111.07		28,749.14		28,749.14	
4-Mar	26,543.02	1,889.88			1,606.38	506.64			306.39		30,852.31	153,564.77	(122,712.46)	11-Mar
7-Mar	23,808.28	1,904.16			3,871.70	1,245.00			615.92		31,445.06	31,445.06	(0.00)	14-Mar
8-Mar	16,219.76	1,178.93			7,529.44	2,594.58			986.95		28,509.66	28,509.66	-	15-Mar
9-Mar	17,312.45	1,212.81			4,160.26	2,027.87			717.00		25,430.39	25,430.39	0.00	16-Mar
10-Mar	34,127.05	2,597.67			3,053.69	984.39			635.67		41,398.47	41,398.47	-	17-Mar
11-Mar	28,822.85	2,477.91			4,326.00	1,022.97			530.98		37,180.71	37,180.71	-	18-Mar
14-Mar	28,997.22	2,328.86			10,444.38	3,145.17			1,809.94		46,725.57	46,725.57	-	21-Mar
15-Mar	22,366.68	1,810.98			8,623.96	2,359.27			962.64		36,123.53	36,123.53	(0.00)	22-Mar
16-Mar	38,414.69	3,258.13			5,463.44	1,257.50			718.59		49,112.35	49,112.35	-	23-Mar
17-Mar	19,086.01	1,462.29			3,592.48	1,946.86			490.23		26,577.87	26,577.87	-	24-Mar
18-Mar	16,812.54	1,454.77			1,408.64	382.50			213.51		20,271.96	20,271.96	-	25-Mar
19-Mar	(4,116.57)	(64.16)			(1,282.97)	(53.72)			(17.72)		(5,535.14)		(5,535.14)	
21-Mar	21,970.12	1,677.50			1,697.42	560.89			294.00		26,199.93	20,664.79	5,535.14	28-Mar
22-Mar	23,543.97	1,796.44			9,374.11	2,696.99			1,806.87		39,218.38	39,218.38	0.00	29-Mar
23-Mar	15,643.68	1,242.53			3,172.18	948.86			501.68		21,508.93	21,508.93	-	30-Mar
24-Mar	33,381.76	2,897.00			1,652.77	497.20			244.18		38,672.91	38,672.91	(0.00)	31-Mar
25-Mar	9,460.02	734.83			4,466.90	1,240.89			836.92		16,739.56	16,739.56	(0.00)	1-Apr
28-Mar	27,015.38	2,098.80			1,390.02	550.50			290.20		31,344.90	31,344.90	-	4-Apr
29-Mar	29,147.79	2,332.97			5,785.71	1,781.75			1,135.11		40,183.33	40,183.33	-	5-Apr
30-Mar	29,580.01	2,393.97			8,320.34	7,543.74			1,713.47		49,551.53	49,551.53	-	6-Apr
31-Mar	54,182.15	4,416.98			8,500.10	6,637.85			2,164.24		75,901.32	75,834.41	66.91	8-Apr
TTL	621,737.55	48,845.59	0.00	0.00	104,367.46	43,154.00	0.00	0.00	17,809.39	0.00	835,913.99	830,059.08	5,854.91	

OVERALL TOTAL	835,913.99
LESS REFUNDS	0.00
LESS HCAD COMM FEES	66.91
LESS COMM/COST	5,788.00
BALANCE	830,059.08
LESS TRANSFERRED	616,405.35
LESS TRANSF IN TRANSIT	213,653.73
BALANCE PENDING	0.00

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YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2021	M & O	.567100	491,342.62	.00	38,601.64	.00	529,944.26	84.26	.00	.00	530,028.52
	I & S	.150500	130,394.93	.00	10,243.95	.00	140,638.88	.00	.00	.00	140,638.88
	TOTAL	.717600	621,737.55	.00	48,845.59	.00	670,583.14	84.26	.00	.00	670,667.40
2020	M & O	.567100	46,028.41	.00	11,150.65	.00	57,179.06	9,872.51	.00	.00	67,051.57
	I & S	.150500	12,215.23	.00	2,959.19	.00	15,174.42	.00	.00	.00	15,174.42
	TOTAL	.717600	58,243.64	.00	14,109.84	.00	72,353.48	9,872.51	.00	.00	82,225.99
2019	M & O	.567100	16,767.81	.00	5,778.33	.00	22,546.14	3,815.68	.00	.00	26,361.82
	I & S	.150500	4,449.91	.00	1,533.52	.00	5,983.43	.00	.00	.00	5,983.43
	TOTAL	.717600	21,217.72	.00	7,311.85	.00	28,529.57	3,815.68	.00	.00	32,345.25
2018	M & O	.567100	5,261.35	.00	1,983.65	.00	7,245.00	811.62	.00	.00	8,056.62
	I & S	.081900	759.86	.00	286.42	.00	1,046.28	.00	.00	.00	1,046.28
	TOTAL	.649000	6,021.21	.00	2,270.07	.00	8,291.28	811.62	.00	.00	9,102.90
2017	M & O	.567100	3,620.06	.00	1,712.82	.00	5,332.88	666.75	.00	.00	5,999.63
	I & S	.081900	522.77	.00	247.32	.00	770.09	.00	.00	.00	770.09
	TOTAL	.649000	4,142.83	.00	1,960.14	.00	6,102.97	666.75	.00	.00	6,769.72
2016	M & O	.582100	1,769.66	.00	1,016.39	.00	2,786.05	349.46	.00	.00	3,135.51
	I & S	.071900	218.58	.00	125.52	.00	344.10	.00	.00	.00	344.10
	TOTAL	.654000	1,988.24	.00	1,141.91	.00	3,130.15	349.46	.00	.00	3,479.61
2015	M & O	.582100	1,642.72	.00	812.63	.00	2,455.35	150.49	.00	.00	2,605.84
	I & S	.071900	202.91	.00	100.37	.00	303.28	.00	.00	.00	303.28
	TOTAL	.654000	1,845.63	.00	913.00	.00	2,758.63	150.49	.00	.00	2,909.12
2014	M & O	.608100	1,097.37	.00	797.77	.00	1,895.14	195.06	.00	.00	2,090.20
	I & S	.071900	129.77	.00	94.33	.00	224.10	.00	.00	.00	224.10
	TOTAL	.680000	1,227.14	.00	892.10	.00	2,119.24	195.06	.00	.00	2,314.30
2013	M & O	.605000	1,045.69	.00	821.21	.00	1,866.90	22.06	.00	.00	1,888.96
	I & S	.075000	129.64	.00	101.82	.00	231.46	.00	.00	.00	231.46
	TOTAL	.680000	1,175.33	.00	923.03	.00	2,098.36	22.06	.00	.00	2,120.42
2012	M & O	.602600	1,205.02	.00	1,235.10	.00	2,440.12	.00	.00	.00	2,440.12
	I & S	.077400	154.79	.00	158.64	.00	313.43	.00	.00	.00	313.43
	TOTAL	.680000	1,359.81	.00	1,393.74	.00	2,753.55	.00	.00	.00	2,753.55
2011	M & O	.602100	1,014.25	.00	1,141.27	.00	2,155.52	296.76	.00	.00	2,452.28
	I & S	.077900	131.24	.00	147.66	.00	278.90	.00	.00	.00	278.90
	TOTAL	.680000	1,145.49	.00	1,288.93	.00	2,434.42	296.76	.00	.00	2,731.18
2010	M & O	.601800	678.69	.00	800.10	.00	1,478.79	190.29	.00	.00	1,669.08
	I & S	.078200	88.18	.00	103.96	.00	192.14	.00	.00	.00	192.14
	TOTAL	.680000	766.87	.00	904.06	.00	1,670.93	190.29	.00	.00	1,861.22

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YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2009	M & O	.601800	565.59	.00	761.41	.00	1,327.00	180.50	.00	.00	1,507.50
	I & S	.078200	73.48	.00	98.95	.00	172.43	.00	.00	.00	172.43
	TOTAL	.680000	639.07	.00	860.36	.00	1,499.43	180.50	.00	.00	1,679.93
2008	M & O	.602940	639.74	.00	902.99	.00	1,542.73	71.10	.00	.00	1,613.83
	I & S	.078910	83.72	.00	118.17	.00	201.89	.00	.00	.00	201.89
	TOTAL	.681850	723.46	.00	1,021.16	.00	1,744.62	71.10	.00	.00	1,815.72
2007	M & O	.596130	465.50	.00	737.25	.00	1,202.75	169.41	.00	.00	1,372.16
	I & S	.086990	67.93	.00	107.59	.00	175.52	.00	.00	.00	175.52
	TOTAL	.683120	533.43	.00	844.84	.00	1,378.27	169.41	.00	.00	1,547.68
2006	M & O	.593130	441.67	.00	802.08	.00	1,243.75	201.45	.00	.00	1,445.20
	I & S	.089990	67.01	.00	121.68	.00	188.69	.00	.00	.00	188.69
	TOTAL	.683120	508.68	.00	923.76	.00	1,432.44	201.45	.00	.00	1,633.89
2005	M & O	.593130	154.63	.00	263.75	.00	418.38	58.86	.00	.00	477.24
	I & S	.089990	23.46	.00	40.01	.00	63.47	.00	.00	.00	63.47
	TOTAL	.683120	178.09	.00	303.76	.00	481.85	58.86	.00	.00	540.71
2004	M & O	.601650	627.80	.00	1,194.15	.00	1,821.95	90.15	.00	.00	1,912.10
	I & S	.081470	85.01	.00	161.69	.00	246.70	.00	.00	.00	246.70
	TOTAL	.683120	712.81	.00	1,355.84	.00	2,068.65	90.15	.00	.00	2,158.80
2003	M & O	.596220	410.70	.00	889.56	.00	1,300.26	63.48	.00	.00	1,363.74
	I & S	.086900	59.86	.00	129.66	.00	189.52	.00	.00	.00	189.52
	TOTAL	.683120	470.56	.00	1,019.22	.00	1,489.78	63.48	.00	.00	1,553.26
2002	M & O	.590210	74.08	.00	178.53	.00	252.61	44.30	.00	.00	296.91
	I & S	.099790	12.52	.00	30.18	.00	42.70	.00	.00	.00	42.70
	TOTAL	.690000	86.60	.00	208.71	.00	295.31	44.30	.00	.00	339.61
2001	M & O	.564720	274.69	.00	538.11	.00	812.80	46.37	.00	.00	859.17
	I & S	.097590	47.46	.00	92.98	.00	140.44	.00	.00	.00	140.44
	TOTAL	.662310	322.15	.00	631.09	.00	953.24	46.37	.00	.00	999.61
2000	M & O	.533960	309.39	.00	632.63	.00	942.02	46.50	.00	.00	988.52
	I & S	.108350	62.78	.00	128.37	.00	191.15	.00	.00	.00	191.15
	TOTAL	.642310	372.17	.00	761.00	.00	1,133.17	46.50	.00	.00	1,179.67
1999	M & O	.529360	96.19	.00	248.43	.00	344.62	57.90	.00	.00	402.52
	I & S	.112950	20.52	.00	53.01	.00	73.53	.00	.00	.00	73.53
	TOTAL	.642310	116.71	.00	301.44	.00	418.15	57.90	.00	.00	476.05
1998	M & O	.505610	82.93	.00	234.46	.00	317.39	48.61	.00	.00	366.00
	I & S	.124390	20.40	.00	57.68	.00	78.08	.00	.00	.00	78.08
	TOTAL	.630000	103.33	.00	292.14	.00	395.47	48.61	.00	.00	444.08

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YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
1997	M & O	.524810	64.51	.00	194.17	.00	258.68	44.36	.00	.00	303.04
	I & S	.075190	9.24	.00	27.82	.00	37.06	.00	.00	.00	37.06
	TOTAL	.600000	73.75	.00	221.99	.00	295.74	44.36	.00	.00	340.10
1996	M & O	.516090	94.35	.00	266.20	.00	360.55	40.61	.00	.00	401.16
	I & S	.083910	15.34	.00	43.28	.00	58.62	.00	.00	.00	58.62
	TOTAL	.600000	109.69	.00	309.48	.00	419.17	40.61	.00	.00	459.78
1995	M & O	.510030	56.04	.00	181.90	.00	237.94	41.79	.00	.00	279.73
	I & S	.089970	9.89	.00	32.09	.00	41.98	.00	.00	.00	41.98
	TOTAL	.600000	65.93	.00	213.99	.00	279.92	41.79	.00	.00	321.71
1994	M & O	.471740	51.54	.00	173.70	.00	225.24	40.82	.00	.00	266.06
	I & S	.098260	10.74	.00	36.18	.00	46.92	.00	.00	.00	46.92
	TOTAL	.570000	62.28	.00	209.88	.00	272.16	40.82	.00	.00	312.98
1993	M & O	.465440	37.32	.00	130.23	.00	167.55	30.78	.00	.00	198.33
	I & S	.104560	8.38	.00	29.26	.00	37.64	.00	.00	.00	37.64
	TOTAL	.570000	45.70	.00	159.49	.00	205.19	30.78	.00	.00	235.97
1992	M & O	.447640	28.90	.00	104.35	.00	133.25	25.01	.00	.00	158.26
	I & S	.112360	7.26	.00	26.19	.00	33.45	.00	.00	.00	33.45
	TOTAL	.560000	36.16	.00	130.54	.00	166.70	25.01	.00	.00	191.71
1991	M & O	.464340	29.98	.00	111.84	.00	141.82	25.66	.00	.00	167.48
	I & S	.095660	6.18	.00	23.04	.00	29.22	.00	.00	.00	29.22
	TOTAL	.560000	36.16	.00	134.88	.00	171.04	25.66	.00	.00	196.70
1990	M & O	.473940	30.61	.00	117.87	.00	148.48	26.79	.00	.00	175.27
	I & S	.096060	6.21	.00	23.89	.00	30.10	.00	.00	.00	30.10
	TOTAL	.570000	36.82	.00	141.76	.00	178.58	26.79	.00	.00	205.37
ALL	M & O		576,009.81	.00	74,515.17	.00	650,524.98	17,809.39	.00	.00	668,334.37
ALL	I & S		150,095.20	.00	17,484.42	.00	167,579.62	.00	.00	.00	167,579.62
ALL	TOTAL		726,105.01	.00	91,999.59	.00	818,104.60	17,809.39	.00	.00	835,913.99
DLQ	M & O		84,667.19	.00	35,913.53	.00	120,580.72	17,725.13	.00	.00	138,305.85
DLQ	I & S		19,700.27	.00	7,240.47	.00	26,940.74	.00	.00	.00	26,940.74
DLQ	TOTAL		104,367.46	.00	43,154.00	.00	147,521.46	17,725.13	.00	.00	165,246.59
CURR	M & O		491,342.62	.00	38,601.64	.00	529,944.26	84.26	.00	.00	530,028.52
CURR	I & S		130,394.93	.00	10,243.95	.00	140,638.88	.00	.00	.00	140,638.88
CURR	TOTAL		621,737.55	.00	48,845.59	.00	670,583.14	84.26	.00	.00	670,667.40

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YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2021	M & O	.567100	491,342.62	.00	38,601.64	.00	529,944.26	84.26	.00	.00	530,028.52
	I & S	.150500	130,394.93	.00	10,243.95	.00	140,638.88	.00	.00	.00	140,638.88
	TOTAL	.717600	621,737.55	.00	48,845.59	.00	670,583.14	84.26	.00	.00	670,667.40
2020	M & O	.567100	46,028.41	.00	11,150.65	.00	57,179.06	9,872.51	.00	.00	67,051.57
	I & S	.150500	12,215.23	.00	2,959.19	.00	15,174.42	.00	.00	.00	15,174.42
	TOTAL	.717600	58,243.64	.00	14,109.84	.00	72,353.48	9,872.51	.00	.00	82,225.99
2019	M & O	.567100	16,767.81	.00	5,778.33	.00	22,546.14	3,815.68	.00	.00	26,361.82
	I & S	.150500	4,449.91	.00	1,533.52	.00	5,983.43	.00	.00	.00	5,983.43
	TOTAL	.717600	21,217.72	.00	7,311.85	.00	28,529.57	3,815.68	.00	.00	32,345.25
2018	M & O	.567100	5,261.35	.00	1,983.65	.00	7,245.00	811.62	.00	.00	8,056.62
	I & S	.081900	759.86	.00	286.42	.00	1,046.28	.00	.00	.00	1,046.28
	TOTAL	.649000	6,021.21	.00	2,270.07	.00	8,291.28	811.62	.00	.00	9,102.90
2017	M & O	.567100	3,620.06	.00	1,712.82	.00	5,332.88	666.75	.00	.00	5,999.63
	I & S	.081900	522.77	.00	247.32	.00	770.09	.00	.00	.00	770.09
	TOTAL	.649000	4,142.83	.00	1,960.14	.00	6,102.97	666.75	.00	.00	6,769.72
2016	M & O	.582100	1,769.66	.00	1,016.39	.00	2,786.05	349.46	.00	.00	3,135.51
	I & S	.071900	218.58	.00	125.52	.00	344.10	.00	.00	.00	344.10
	TOTAL	.654000	1,988.24	.00	1,141.91	.00	3,130.15	349.46	.00	.00	3,479.61
2015	M & O	.582100	1,642.72	.00	812.63	.00	2,455.35	150.49	.00	.00	2,605.84
	I & S	.071900	202.91	.00	100.37	.00	303.28	.00	.00	.00	303.28
	TOTAL	.654000	1,845.63	.00	913.00	.00	2,758.63	150.49	.00	.00	2,909.12
2014	M & O	.608100	1,097.37	.00	797.77	.00	1,895.14	195.06	.00	.00	2,090.20
	I & S	.071900	129.77	.00	94.33	.00	224.10	.00	.00	.00	224.10
	TOTAL	.680000	1,227.14	.00	892.10	.00	2,119.24	195.06	.00	.00	2,314.30
2013	M & O	.605000	1,045.69	.00	821.21	.00	1,866.90	22.06	.00	.00	1,888.96
	I & S	.075000	129.64	.00	101.82	.00	231.46	.00	.00	.00	231.46
	TOTAL	.680000	1,175.33	.00	923.03	.00	2,098.36	22.06	.00	.00	2,120.42
2012	M & O	.602600	1,205.02	.00	1,235.10	.00	2,440.12	.00	.00	.00	2,440.12
	I & S	.077400	154.79	.00	158.64	.00	313.43	.00	.00	.00	313.43
	TOTAL	.680000	1,359.81	.00	1,393.74	.00	2,753.55	.00	.00	.00	2,753.55
2011	M & O	.602100	1,014.25	.00	1,141.27	.00	2,155.52	296.76	.00	.00	2,452.28
	I & S	.077900	131.24	.00	147.66	.00	278.90	.00	.00	.00	278.90
	TOTAL	.680000	1,145.49	.00	1,288.93	.00	2,434.42	296.76	.00	.00	2,731.18
2010	M & O	.601800	678.69	.00	800.10	.00	1,478.79	190.29	.00	.00	1,669.08
	I & S	.078200	88.18	.00	103.96	.00	192.14	.00	.00	.00	192.14
	TOTAL	.680000	766.87	.00	904.06	.00	1,670.93	190.29	.00	.00	1,861.22

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 INCLUDES AG ROLLBACK

YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2009	M & O	.601800	565.59	.00	761.41	.00	1,327.00	180.50	.00	.00	1,507.50
	I & S	.078200	73.48	.00	98.95	.00	172.43	.00	.00	.00	172.43
	TOTAL	.680000	639.07	.00	860.36	.00	1,499.43	180.50	.00	.00	1,679.93
2008	M & O	.602940	639.74	.00	902.99	.00	1,542.73	71.10	.00	.00	1,613.83
	I & S	.078910	83.72	.00	118.17	.00	201.89	.00	.00	.00	201.89
	TOTAL	.681850	723.46	.00	1,021.16	.00	1,744.62	71.10	.00	.00	1,815.72
2007	M & O	.596130	465.50	.00	737.25	.00	1,202.75	169.41	.00	.00	1,372.16
	I & S	.086990	67.93	.00	107.59	.00	175.52	.00	.00	.00	175.52
	TOTAL	.683120	533.43	.00	844.84	.00	1,378.27	169.41	.00	.00	1,547.68
2006	M & O	.593130	441.67	.00	802.08	.00	1,243.75	201.45	.00	.00	1,445.20
	I & S	.089990	67.01	.00	121.68	.00	188.69	.00	.00	.00	188.69
	TOTAL	.683120	508.68	.00	923.76	.00	1,432.44	201.45	.00	.00	1,633.89
2005	M & O	.593130	154.63	.00	263.75	.00	418.38	58.86	.00	.00	477.24
	I & S	.089990	23.46	.00	40.01	.00	63.47	.00	.00	.00	63.47
	TOTAL	.683120	178.09	.00	303.76	.00	481.85	58.86	.00	.00	540.71
2004	M & O	.601650	627.80	.00	1,194.15	.00	1,821.95	90.15	.00	.00	1,912.10
	I & S	.081470	85.01	.00	161.69	.00	246.70	.00	.00	.00	246.70
	TOTAL	.683120	712.81	.00	1,355.84	.00	2,068.65	90.15	.00	.00	2,158.80
2003	M & O	.596220	410.70	.00	889.56	.00	1,300.26	63.48	.00	.00	1,363.74
	I & S	.086900	59.86	.00	129.66	.00	189.52	.00	.00	.00	189.52
	TOTAL	.683120	470.56	.00	1,019.22	.00	1,489.78	63.48	.00	.00	1,553.26
2002	M & O	.590210	74.08	.00	178.53	.00	252.61	44.30	.00	.00	296.91
	I & S	.099790	12.52	.00	30.18	.00	42.70	.00	.00	.00	42.70
	TOTAL	.690000	86.60	.00	208.71	.00	295.31	44.30	.00	.00	339.61
2001	M & O	.564720	274.69	.00	538.11	.00	812.80	46.37	.00	.00	859.17
	I & S	.097590	47.46	.00	92.98	.00	140.44	.00	.00	.00	140.44
	TOTAL	.662310	322.15	.00	631.09	.00	953.24	46.37	.00	.00	999.61
2000	M & O	.533960	309.39	.00	632.63	.00	942.02	46.50	.00	.00	988.52
	I & S	.108350	62.78	.00	128.37	.00	191.15	.00	.00	.00	191.15
	TOTAL	.642310	372.17	.00	761.00	.00	1,133.17	46.50	.00	.00	1,179.67
1999	M & O	.529360	96.19	.00	248.43	.00	344.62	57.90	.00	.00	402.52
	I & S	.112950	20.52	.00	53.01	.00	73.53	.00	.00	.00	73.53
	TOTAL	.642310	116.71	.00	301.44	.00	418.15	57.90	.00	.00	476.05
1998	M & O	.505610	82.93	.00	234.46	.00	317.39	48.61	.00	.00	366.00
	I & S	.124390	20.40	.00	57.68	.00	78.08	.00	.00	.00	78.08
	TOTAL	.630000	103.33	.00	292.14	.00	395.47	48.61	.00	.00	444.08

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 TC298-D SELECTION: DEPOSIT
 RECEIPT DATE: ALL
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TAX COLLECTION SYSTEM
 DEPOSIT DISTRIBUTION
 FROM: 03/01/2022 THRU 03/31/2022
 JURISDICTION: 0033 CITY OF PHARR

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 INCLUDES AG ROLLBACK

YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
1997	M & O	.524810	64.51	.00	194.17	.00	258.68	44.36	.00	.00	303.04
	I & S	.075190	9.24	.00	27.82	.00	37.06	.00	.00	.00	37.06
	TOTAL	.600000	73.75	.00	221.99	.00	295.74	44.36	.00	.00	340.10
1996	M & O	.516090	94.35	.00	266.20	.00	360.55	40.61	.00	.00	401.16
	I & S	.083910	15.34	.00	43.28	.00	58.62	.00	.00	.00	58.62
	TOTAL	.600000	109.69	.00	309.48	.00	419.17	40.61	.00	.00	459.78
1995	M & O	.510030	56.04	.00	181.90	.00	237.94	41.79	.00	.00	279.73
	I & S	.089970	9.89	.00	32.09	.00	41.98	.00	.00	.00	41.98
	TOTAL	.600000	65.93	.00	213.99	.00	279.92	41.79	.00	.00	321.71
1994	M & O	.471740	51.54	.00	173.70	.00	225.24	40.82	.00	.00	266.06
	I & S	.098260	10.74	.00	36.18	.00	46.92	.00	.00	.00	46.92
	TOTAL	.570000	62.28	.00	209.88	.00	272.16	40.82	.00	.00	312.98
1993	M & O	.465440	37.32	.00	130.23	.00	167.55	30.78	.00	.00	198.33
	I & S	.104560	8.38	.00	29.26	.00	37.64	.00	.00	.00	37.64
	TOTAL	.570000	45.70	.00	159.49	.00	205.19	30.78	.00	.00	235.97
1992	M & O	.447640	28.90	.00	104.35	.00	133.25	25.01	.00	.00	158.26
	I & S	.112360	7.26	.00	26.19	.00	33.45	.00	.00	.00	33.45
	TOTAL	.560000	36.16	.00	130.54	.00	166.70	25.01	.00	.00	191.71
1991	M & O	.464340	29.98	.00	111.84	.00	141.82	25.66	.00	.00	167.48
	I & S	.095660	6.18	.00	23.04	.00	29.22	.00	.00	.00	29.22
	TOTAL	.560000	36.16	.00	134.88	.00	171.04	25.66	.00	.00	196.70
1990	M & O	.473940	30.61	.00	117.87	.00	148.48	26.79	.00	.00	175.27
	I & S	.096060	6.21	.00	23.89	.00	30.10	.00	.00	.00	30.10
	TOTAL	.570000	36.82	.00	141.76	.00	178.58	26.79	.00	.00	205.37
ALL	M & O		576,009.81	.00	74,515.17	.00	650,524.98	17,809.39	.00	.00	668,334.37
ALL	I & S		150,095.20	.00	17,484.42	.00	167,579.62	.00	.00	.00	167,579.62
ALL	TOTAL		726,105.01	.00	91,999.59	.00	818,104.60	17,809.39	.00	.00	835,913.99
DLQ	M & O		84,667.19	.00	35,913.53	.00	120,580.72	17,725.13	.00	.00	138,305.85
DLQ	I & S		19,700.27	.00	7,240.47	.00	26,940.74	.00	.00	.00	26,940.74
DLQ	TOTAL		104,367.46	.00	43,154.00	.00	147,521.46	17,725.13	.00	.00	165,246.59
CURR	M & O		491,342.62	.00	38,601.64	.00	529,944.26	84.26	.00	.00	530,028.52
CURR	I & S		130,394.93	.00	10,243.95	.00	140,638.88	.00	.00	.00	140,638.88
CURR	TOTAL		621,737.55	.00	48,845.59	.00	670,583.14	84.26	.00	.00	670,667.40

FISCAL START: 10/01/2021 END: 09/30/2022 JURISDICTION: 0033 CITY OF PHARR

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE	TAX RATE	TAX LEVY	PAID ACCTS
	-----	-----	-----	-----	-----	-----
CURRENT YEAR	3,586,255.062	89,919,818	3,676,174,880	00.717600	25,777,932.72	24,636
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YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL
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2021	25,143,252.18	9,377.14-	634,680.54	621,737.55	23,867,277.00	1,910,655.72	92.59	0.00
2020	885,838.78	874.39-	46,667.04-	58,243.64	358,244.02	480,927.72	42.69	1,350.13-
2019	403,409.47	327.32-	8,269.03-	21,217.72	87,905.29	307,235.15	22.25	1,457.98-
2018	221,459.55	32.45-	7,864.01-	6,021.21	22,523.09	191,072.45	10.54	537.92-
2017	167,002.75	32.45-	8,550.34-	4,142.83	13,066.09	145,386.32	8.25	1,557.40-
2016	123,819.01	.00	484.69-	1,988.24	11,066.85	112,267.47	8.97	406.21-
2015	106,458.56	.00	465.95-	1,845.63	7,582.83	98,409.78	7.15	465.95-
2014	93,480.17	.00	381.43-	1,227.14	6,073.40	87,025.34	6.52	381.43-
2013	73,869.22	.00	362.94-	1,175.33	5,038.68	68,467.60	6.85	362.94-
2012	71,404.71	.00	429.99-	1,359.81	4,039.52	66,935.20	5.69	429.99-
2011	69,791.20	.00	462.63-	1,145.49	3,430.21	65,898.36	4.95	462.63-
2010	68,778.83	.00	289.87-	766.87	2,689.21	65,799.75	3.93	289.87-
2009	68,369.78	.00	23.32-	639.07	2,538.20	65,808.26	3.71	23.32-
2008	54,696.71	.00	0.00	723.46	2,485.80	52,210.91	4.54	0.00
2007	47,967.29	.00	0.00	533.43	1,584.05	46,383.24	3.30	0.00
2006	42,640.85	.00	0.00	508.68	1,312.32	41,328.53	3.08	0.00
2005	38,879.35	.00	0.00	178.09	1,083.42	37,795.93	2.79	0.00
2004	38,994.10	.00	0.00	712.81	1,999.95	36,994.15	5.13	0.00
2003	30,307.37	.00	0.00	470.56	1,122.74	29,184.63	3.70	0.00
2002	28,043.64	.00	0.00	86.60	649.72	27,393.92	2.32	0.00
2001	21,334.51	.00	0.00	322.15	594.83	20,739.68	2.79	0.00
2000	95,245.42	.00	0.00	1,058.70	2,286.10	92,959.32	2.40	0.00
****	27,895,043.45	10,643.75-	560,429.30	726,105.01	24,404,593.32	4,050,879.43		7,725.77-

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TAX COLLECTION SYSTEM
TAX COLLECTOR MONTHLY REPORT
FROM 03/01/2022 TO 03/31/2022

AG ROLLBACK ONLY

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FISCAL START: 10/01/2021 END: 09/30/2022 JURISDICTION: 0033 CITY OF PHARR

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE	TAX RATE	TAX LEVY	PAID ACCTS
	-----	-----	-----	-----	-----	-----
CURRENT YEAR	0	0	0	00.717600	1,725.46	1
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YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL
	-----	-----	-----	-----	-----	-----	-----	-----
2020	0.00	.00	1,725.46	0.00	1,725.46	0.00		0.00
2019	6,958.36	.00	2,483.47	0.00	9,441.83	0.00		0.00
2018	0.00	.00	4,785.14	0.00	4,785.14	0.00		0.00
2017	0.00	.00	0.00	0.00	0.00	0.00		0.00
****	6,958.36	.00	8,994.07	0.00	15,952.43	0.00		0.00

TAX COLLECTION SYSTEM
TAX COLLECTOR MONTHLY REPORT
FROM 03/01/2022 TO 03/31/2022

INCLUDES AG ROLLBACK

FISCAL START: 10/01/2021 END: 09/30/2022 JURISDICTION: 0033 CITY OF PHARR

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE	TAX RATE	TAX LEVY	PAID ACCTS
	-----	-----	-----	-----	-----	-----
CURRENT YEAR	3,586,255,062	89,919,818	3,676,174,880	00.717600	25,777,932.72	24,636
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YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL
	-----	-----	-----	-----	-----	-----	-----	-----
2021	25,143,252.18	9,377.14-	634,680.54	621,737.55	23,867,277.00	1,910,655.72	92.59	0.00
2020	885,838.78	874.39-	44,941.58-	58,243.64	359,969.48	480,927.72	42.81	1,350.13-
2019	410,367.83	327.32-	5,785.56-	21,217.72	97,347.12	307,235.15	24.06	1,457.98-
2018	221,459.55	32.45-	3,078.87-	6,021.21	27,308.23	191,072.45	12.50	537.92-
2017	167,002.75	32.45-	8,550.34-	4,142.83	13,066.09	145,386.32	8.25	1,557.40-
2016	123,819.01	.00	484.69-	1,988.24	11,066.85	112,267.47	8.97	406.21-
2015	106,458.56	.00	465.95-	1,845.63	7,582.83	98,409.78	7.15	465.95-
2014	93,480.17	.00	381.43-	1,227.14	6,073.40	87,025.34	6.52	381.43-
2013	73,869.22	.00	362.94-	1,175.33	5,038.68	68,467.60	6.85	362.94-
2012	71,404.71	.00	429.99-	1,359.81	4,039.52	66,935.20	5.69	429.99-
2011	69,791.20	.00	462.63-	1,145.49	3,430.21	65,898.36	4.95	462.63-
2010	68,778.83	.00	289.87-	766.87	2,689.21	65,799.75	3.93	289.87-
2009	68,369.78	.00	23.32-	639.07	2,538.20	65,808.26	3.71	23.32-
2008	54,696.71	.00	0.00	723.46	2,485.80	52,210.91	4.54	0.00
2007	47,967.29	.00	0.00	533.43	1,584.05	46,383.24	3.30	0.00
2006	42,640.85	.00	0.00	508.68	1,312.32	41,328.53	3.08	0.00
2005	38,879.35	.00	0.00	178.09	1,083.42	37,795.93	2.79	0.00
2004	38,994.10	.00	0.00	712.81	1,999.95	36,994.15	5.13	0.00
2003	30,307.37	.00	0.00	470.56	1,122.74	29,184.63	3.70	0.00
2002	28,043.64	.00	0.00	86.60	649.72	27,393.92	2.32	0.00
2001	21,334.51	.00	0.00	322.15	594.83	20,739.68	2.79	0.00
2000	95,245.42	.00	0.00	1,058.70	2,286.10	92,959.32	2.40	0.00
****	27,902,001.81	10,643.75-	569,423.37	726,105.01	24,420,545.75	4,050,879.43		7,725.77-

TAX COLLECTION SYSTEM
TAX COLLECTOR MONTHLY REPORT
FROM 03/01/2022 TO 03/31/2022

JURISDICTION: 0033 CITY OF PHARR

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE	TAX RATE	TAX LEVY	PAID ACCTS
	-----	-----	-----	-----	-----	-----
CURRENT YEAR	3,586,255.062	89,919,818	3,676,174,880	0.717600	25,777,932.72	24,636
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YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL
2021	25,143,252.18	9,377.14-	634,680.54	621,737.55	23,867,277.00	1,910,655.72	92.59	0.00
	ADJUSTMENT REFUNDS	4,116.57-	25,072.37-					
2020	885,838.78	874.39-	46,667.04-	58,243.64	358,244.02	480,927.72	42.69	1,350.13-
	ADJUSTMENT REFUNDS	880.68-	11,647.45-					
2019	403,409.47	327.32-	8,269.03-	21,217.72	87,905.29	307,235.15	22.25	1,457.98-
	ADJUSTMENT REFUNDS	337.39-	6,415.88-					
2018	221,459.55	32.45-	7,864.01-	6,021.21	22,523.09	191,072.45	10.54	537.92-
	ADJUSTMENT REFUNDS	32.45-	7,002.35-					
2017	167,002.75	32.45-	8,550.34-	4,142.83	13,066.09	145,386.32	8.25	1,557.40-
	ADJUSTMENT REFUNDS	32.45-	6,712.35-					
2016	123,819.01	.00	484.69-	1,988.24	11,066.85	112,267.47	8.97	406.21-
2015	106,458.56	.00	465.95-	1,845.63	7,582.83	98,409.78	7.15	465.95-
2014	93,480.17	.00	381.43-	1,227.14	6,073.40	87,025.34	6.52	381.43-
2013	73,869.22	.00	362.94-	1,175.33	5,038.68	68,467.60	6.85	362.94-
2012	71,404.71	.00	429.99-	1,359.81	4,039.52	66,935.20	5.69	429.99-
2011	69,791.20	.00	462.63-	1,145.49	3,430.21	65,898.36	4.95	462.63-
2010	68,778.83	.00	289.87-	766.87	2,689.21	65,799.75	3.93	289.87-
2009	68,369.78	.00	23.32-	639.07	2,538.20	65,808.26	3.71	23.32-
2008	54,696.71	.00	0.00	723.46	2,485.80	52,210.91	4.54	0.00
2007	47,967.29	.00	0.00	533.43	1,584.05	46,383.24	3.30	0.00
2006	42,640.85	.00	0.00	508.68	1,312.32	41,328.53	3.08	0.00
2005	38,879.35	.00	0.00	178.09	1,083.42	37,795.93	2.79	0.00
2004	38,994.10	.00	0.00	712.81	1,999.95	36,994.15	5.13	0.00
2003	30,307.37	.00	0.00	470.56	1,122.74	29,184.63	3.70	0.00
2002	28,043.64	.00	0.00	86.60	649.72	27,393.92	2.32	0.00
2001	21,334.51	.00	0.00	322.15	594.83	20,739.68	2.79	0.00
2000	95,245.42	.00	0.00	1,058.70	2,286.10	92,959.32	2.40	0.00
****	27,895,043.45	10,643.75-	560,429.30	726,105.01	24,404,593.32	4,050,879.43		7,725.77-
	ADJUSTMENT REFUNDS	5,399.54-	56,850.40-					

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TAX COLLECTION SYSTEM
TAX COLLECTOR MONTHLY REPORT
FROM 03/01/2022 TO 03/31/2022

AG ROLLBACK ONLY

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JURISDICTION: 0033 CITY OF PHARR

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE	TAX RATE	TAX LEVY	PAID ACCTS
	-----	-----	-----	-----	-----	-----
CURRENT YEAR	0	0	0	0.717600	1,725.46	1
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YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL
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2020	0.00	.00	1,725.46	0.00	1,725.46	0.00		0.00
ADJUSTMENT REFUNDS		880.68-	11,647.45-					
2019	6,958.36	.00	2,483.47	0.00	9,441.83	0.00		0.00
ADJUSTMENT REFUNDS		337.39-	6,415.88-					
2018	0.00	.00	4,785.14	0.00	4,785.14	0.00		0.00
ADJUSTMENT REFUNDS		32.45-	7,002.35-					
2017	0.00	.00	0.00	0.00	0.00	0.00		0.00
ADJUSTMENT REFUNDS		32.45-	6,712.35-					
****	6,958.36	.00	8,994.07	0.00	15,952.43	0.00		0.00
ADJUSTMENT REFUNDS		1,282.97-	31,778.03-					

TAX COLLECTION SYSTEM
TAX COLLECTOR MONTHLY REPORT
FROM 03/01/2022 TO 03/31/2022

JURISDICTION: 0033 CITY OF PHARR

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE	TAX RATE	TAX LEVY	PAID ACCTS
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CURRENT YEAR	3,586,255,062	89,919,818	3,676,174,880	0.717600	25,777,932.72	24,636
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YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE COLL % YTD UNCOLL

2021	25,143,252.18	9,377.14-	634,680.54	621,737.55	23,867,277.00	1,910,655.72 92.59 0.00
ADJUSTMENT REFUNDS		4,116.57-	25,072.37-			
2020	885,838.78	874.39-	44,941.58-	58,243.64	359,969.48	480,927.72 42.81 1,350.13-
ADJUSTMENT REFUNDS		880.68-	11,647.45-			
2019	410,367.83	327.32-	5,785.56-	21,217.72	97,347.12	307,235.15 24.06 1,457.98-
ADJUSTMENT REFUNDS		337.39-	6,415.88-			
2018	221,459.55	32.45-	3,078.87-	6,021.21	27,308.23	191,072.45 12.50 537.92-
ADJUSTMENT REFUNDS		32.45-	7,002.35-			
2017	167,002.75	32.45-	8,550.34-	4,142.83	13,066.09	145,386.32 8.25 1,557.40-
ADJUSTMENT REFUNDS		32.45-	6,712.35-			
2016	123,819.01	.00	484.69-	1,988.24	11,066.85	112,267.47 8.97 406.21-
2015	106,458.56	.00	465.95-	1,845.63	7,582.83	98,409.78 7.15 465.95-
2014	93,480.17	.00	381.43-	1,227.14	6,073.40	87,025.34 6.52 381.43-
2013	73,869.22	.00	362.94-	1,175.33	5,038.68	68,467.60 6.85 362.94-
2012	71,404.71	.00	429.99-	1,359.81	4,039.52	66,935.20 5.69 429.99-
2011	69,791.20	.00	462.63-	1,145.49	3,430.21	65,898.36 4.95 462.63-
2010	68,778.83	.00	289.87-	766.87	2,689.21	65,799.75 3.93 289.87-
2009	68,369.78	.00	23.32-	639.07	2,538.20	65,808.26 3.71 23.32-
2008	54,696.71	.00	0.00	723.46	2,485.80	52,210.91 4.54 0.00
2007	47,967.29	.00	0.00	533.43	1,584.05	46,383.24 3.30 0.00
2006	42,640.85	.00	0.00	508.68	1,312.32	41,328.53 3.08 0.00
2005	38,879.35	.00	0.00	178.09	1,083.42	37,795.93 2.79 0.00
2004	38,994.10	.00	0.00	712.81	1,999.95	36,994.15 5.13 0.00
2003	30,307.37	.00	0.00	470.56	1,122.74	29,184.63 3.70 0.00
2002	28,043.64	.00	0.00	86.60	649.72	27,393.92 2.32 0.00
2001	21,334.51	.00	0.00	322.15	594.83	20,739.68 2.79 0.00
2000	95,245.42	.00	0.00	1,058.70	2,286.10	92,959.32 2.40 0.00
****	27,902,001.81	10,643.75-	569,423.37	726,105.01	24,420,545.75	4,050,879.43 7,725.77-
ADJUSTMENT REFUNDS		5,399.54-	56,850.40-			

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TAX COLLECTION SYSTEM
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 JURISDICTION: 0033 CITY OF PHARR

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 EXCLUDES AG ROLLBACK -

YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2021	M & O	.567100	18,861,667.38	.00	167,466.32	.00	19,029,133.70	84.26	.00	.00	19,029,217.96
	I & S	.150500	5,005,609.62	.00	44,442.81	.00	5,050,052.43	.00	.00	.00	5,050,052.43
	TOTAL	.717600	23,867,277.00	.00	211,909.13	.00	24,079,186.13	84.26	.00	.00	24,079,270.39
2020	M & O	.567100	283,110.66	.00	60,206.83	.00	343,317.49	59,096.63	.00	.00	402,414.12
	I & S	.150500	75,133.36	.00	15,978.03	.00	91,111.39	.00	.00	.00	91,111.39
	TOTAL	.717600	358,244.02	.00	76,184.86	.00	434,428.88	59,096.63	.00	.00	493,525.51
2019	M & O	.567100	69,469.28	.00	24,647.28	.00	94,116.56	17,426.33	.00	.00	111,542.89
	I & S	.150500	18,436.01	.00	6,540.95	.00	24,976.96	.00	.00	.00	24,976.96
	TOTAL	.717600	87,905.29	.00	31,188.23	.00	119,093.52	17,426.33	.00	.00	136,519.85
2018	M & O	.567100	19,680.79	.00	10,649.97	.00	30,330.76	5,223.08	.00	.00	35,553.84
	I & S	.081900	2,842.30	.00	1,538.04	.00	4,380.34	.00	.00	.00	4,380.34
	TOTAL	.649000	22,523.09	.00	12,188.01	.00	34,711.10	5,223.08	.00	.00	39,934.18
2017	M & O	.567100	11,417.27	.00	8,692.98	.00	20,110.25	3,668.67	.00	.00	23,778.92
	I & S	.081900	1,648.82	.00	1,255.48	.00	2,904.30	.00	.00	.00	2,904.30
	TOTAL	.649000	13,066.09	.00	9,948.46	.00	23,014.55	3,668.67	.00	.00	26,683.22
2016	M & O	.582100	9,850.17	.00	5,839.73	.00	15,689.90	2,080.99	.00	.00	17,770.89
	I & S	.071900	1,216.68	.00	721.30	.00	1,937.98	.00	.00	.00	1,937.98
	TOTAL	.654000	11,066.85	.00	6,561.03	.00	17,627.88	2,080.99	.00	.00	19,708.87
2015	M & O	.582100	6,749.13	.00	3,972.43	.00	10,721.56	1,014.69	.00	.00	11,736.25
	I & S	.071900	833.70	.00	490.63	.00	1,324.33	.00	.00	.00	1,324.33
	TOTAL	.654000	7,582.83	.00	4,463.06	.00	12,045.89	1,014.69	.00	.00	13,060.58
2014	M & O	.608100	5,431.19	.00	3,826.39	.00	9,257.58	970.05	.00	.00	10,227.63
	I & S	.071900	642.21	.00	452.41	.00	1,094.62	.00	.00	.00	1,094.62
	TOTAL	.680000	6,073.40	.00	4,278.80	.00	10,352.20	970.05	.00	.00	11,322.25
2013	M & O	.605000	4,482.92	.00	3,417.76	.00	7,900.68	459.64	.00	.00	8,360.32
	I & S	.075000	555.76	.00	423.73	.00	979.49	.00	.00	.00	979.49
	TOTAL	.680000	5,038.68	.00	3,841.49	.00	8,880.17	459.64	.00	.00	9,339.81
2012	M & O	.602600	3,579.72	.00	3,328.38	.00	6,908.10	358.10	.00	.00	7,266.20
	I & S	.077400	459.80	.00	427.52	.00	887.32	.00	.00	.00	887.32
	TOTAL	.680000	4,039.52	.00	3,755.90	.00	7,795.42	358.10	.00	.00	8,153.52
2011	M & O	.602100	3,037.22	.00	3,250.61	.00	6,287.83	811.82	.00	.00	7,099.65
	I & S	.077900	392.99	.00	420.56	.00	813.55	.00	.00	.00	813.55
	TOTAL	.680000	3,430.21	.00	3,671.17	.00	7,101.38	811.82	.00	.00	7,913.20
2010	M & O	.601800	2,379.95	.00	2,685.58	.00	5,065.53	587.46	.00	.00	5,652.99
	I & S	.078200	309.26	.00	348.98	.00	658.24	.00	.00	.00	658.24
	TOTAL	.680000	2,689.21	.00	3,034.56	.00	5,723.77	587.46	.00	.00	6,311.23

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YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2009	M & O	.601800	2,246.32	.00	2,903.10	.00	5,149.42	646.17	.00	.00	5,795.59
	I & S	.078200	291.88	.00	377.23	.00	669.11	.00	.00	.00	669.11
	TOTAL	.680000	2,538.20	.00	3,280.33	.00	5,818.53	646.17	.00	.00	6,464.70
2008	M & O	.602940	2,198.11	.00	2,960.08	.00	5,158.19	347.69	.00	.00	5,505.88
	I & S	.078910	287.69	.00	387.38	.00	675.07	.00	.00	.00	675.07
	TOTAL	.681850	2,485.80	.00	3,347.46	.00	5,833.26	347.69	.00	.00	6,180.95
2007	M & O	.596130	1,382.33	.00	1,990.04	.00	3,372.37	375.57	.00	.00	3,747.94
	I & S	.086990	201.72	.00	290.41	.00	492.13	.00	.00	.00	492.13
	TOTAL	.683120	1,584.05	.00	2,280.45	.00	3,864.50	375.57	.00	.00	4,240.07
2006	M & O	.593130	1,139.46	.00	1,802.52	.00	2,941.98	365.09	.00	.00	3,307.07
	I & S	.089990	172.86	.00	273.46	.00	446.32	.00	.00	.00	446.32
	TOTAL	.683120	1,312.32	.00	2,075.98	.00	3,388.30	365.09	.00	.00	3,753.39
2005	M & O	.593130	940.71	.00	1,379.41	.00	2,320.12	85.28	.00	.00	2,405.40
	I & S	.089990	142.71	.00	209.28	.00	351.99	.00	.00	.00	351.99
	TOTAL	.683120	1,083.42	.00	1,588.69	.00	2,672.11	85.28	.00	.00	2,757.39
2004	M & O	.601650	1,761.45	.00	2,897.44	.00	4,658.89	172.42	.00	.00	4,831.31
	I & S	.081470	238.50	.00	392.32	.00	630.82	.00	.00	.00	630.82
	TOTAL	.683120	1,999.95	.00	3,289.76	.00	5,289.71	172.42	.00	.00	5,462.13
2003	M & O	.596220	979.92	.00	1,911.50	.00	2,891.42	104.53	.00	.00	2,995.95
	I & S	.086900	142.82	.00	278.62	.00	421.44	.00	.00	.00	421.44
	TOTAL	.683120	1,122.74	.00	2,190.12	.00	3,312.86	104.53	.00	.00	3,417.39
2002	M & O	.590210	555.77	.00	1,116.69	.00	1,672.46	133.73	.00	.00	1,806.19
	I & S	.099790	93.95	.00	188.79	.00	282.74	.00	.00	.00	282.74
	TOTAL	.690000	649.72	.00	1,305.48	.00	1,955.20	133.73	.00	.00	2,088.93
2001	M & O	.564720	507.19	.00	959.43	.00	1,466.62	119.21	.00	.00	1,585.83
	I & S	.097590	87.64	.00	165.79	.00	253.43	.00	.00	.00	253.43
	TOTAL	.662310	594.83	.00	1,125.22	.00	1,720.05	119.21	.00	.00	1,839.26
2000	M & O	.533960	564.91	.00	1,134.26	.00	1,699.17	138.20	.00	.00	1,837.37
	I & S	.108350	114.63	.00	230.16	.00	344.79	.00	.00	.00	344.79
	TOTAL	.642310	679.54	.00	1,364.42	.00	2,043.96	138.20	.00	.00	2,182.16
1999	M & O	.529360	334.45	.00	737.67	.00	1,072.12	145.76	.00	.00	1,217.88
	I & S	.112950	71.36	.00	157.41	.00	228.77	.00	.00	.00	228.77
	TOTAL	.642310	405.81	.00	895.08	.00	1,300.89	145.76	.00	.00	1,446.65
1998	M & O	.505610	361.67	.00	840.76	.00	1,202.43	160.94	.00	.00	1,363.37
	I & S	.124390	88.96	.00	206.83	.00	295.79	.00	.00	.00	295.79
	TOTAL	.630000	450.63	.00	1,047.59	.00	1,498.22	160.94	.00	.00	1,659.16

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YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
1997	M & O	.524810	64.51	.00	194.17	.00	258.68	44.36	.00	.00	303.04
	I & S	.075190	9.24	.00	27.82	.00	37.06	.00	.00	.00	37.06
	TOTAL	.600000	73.75	.00	221.99	.00	295.74	44.36	.00	.00	340.10
1996	M & O	.516090	94.35	.00	266.20	.00	360.55	40.61	.00	.00	401.16
	I & S	.083910	15.34	.00	43.28	.00	58.62	.00	.00	.00	58.62
	TOTAL	.600000	109.69	.00	309.48	.00	419.17	40.61	.00	.00	459.78
1995	M & O	.510030	130.03	.00	360.16	.00	490.19	41.79	.00	.00	531.98
	I & S	.089970	22.94	.00	63.53	.00	86.47	.00	.00	.00	86.47
	TOTAL	.600000	152.97	.00	423.69	.00	576.66	41.79	.00	.00	618.45
1994	M & O	.471740	116.19	.00	337.22	.00	453.41	40.82	.00	.00	494.23
	I & S	.098260	24.21	.00	70.24	.00	94.45	.00	.00	.00	94.45
	TOTAL	.570000	140.40	.00	407.46	.00	547.86	40.82	.00	.00	588.68
1993	M & O	.465440	91.20	.00	316.10	.00	407.30	74.82	.00	.00	482.12
	I & S	.104560	20.48	.00	71.02	.00	91.50	.00	.00	.00	91.50
	TOTAL	.570000	111.68	.00	387.12	.00	498.80	74.82	.00	.00	573.62
1992	M & O	.447640	70.86	.00	250.76	.00	321.62	58.07	.00	.00	379.69
	I & S	.112360	17.79	.00	62.95	.00	80.74	.00	.00	.00	80.74
	TOTAL	.560000	88.65	.00	313.71	.00	402.36	58.07	.00	.00	460.43
1991	M & O	.464340	29.98	.00	111.84	.00	141.82	25.66	.00	.00	167.48
	I & S	.095660	6.18	.00	23.04	.00	29.22	.00	.00	.00	29.22
	TOTAL	.560000	36.16	.00	134.88	.00	171.04	25.66	.00	.00	196.70
1990	M & O	.473940	30.61	.00	117.87	.00	148.48	26.79	.00	.00	175.27
	I & S	.096060	6.21	.00	23.89	.00	30.10	.00	.00	.00	30.10
	TOTAL	.570000	36.82	.00	141.76	.00	178.58	26.79	.00	.00	205.37
ALL	M & O		19,294,455.70	.00	320,571.48	.00	19,615,027.18	94,929.23	.00	.00	19,709,956.41
ALL	I & S		5,110,137.62	.00	76,583.89	.00	5,186,721.51	.00	.00	.00	5,186,721.51
ALL	TOTAL		24,404,593.32	.00	397,155.37	.00	24,801,748.69	94,929.23	.00	.00	24,896,677.92
DLQ	M & O		432,788.32	.00	153,105.16	.00	585,893.48	94,844.97	.00	.00	680,738.45
DLQ	I & S		104,528.00	.00	32,141.08	.00	136,669.08	.00	.00	.00	136,669.08
DLQ	TOTAL		537,316.32	.00	185,246.24	.00	722,562.56	94,844.97	.00	.00	817,407.53
CURR	M & O		18,861,667.38	.00	167,466.32	.00	19,029,133.70	84.26	.00	.00	19,029,217.96
CURR	I & S		5,005,609.62	.00	44,442.81	.00	5,050,052.43	.00	.00	.00	5,050,052.43
CURR	TOTAL		23,867,277.00	.00	211,909.13	.00	24,079,186.13	84.26	.00	.00	24,079,270.39

TAX COLLECTION SYSTEM
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YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2021	M & O	.567100	18,861,667.38	.00	167,466.32	.00	19,029,133.70	84.26	.00	.00	19,029,217.96
	I & S	.150500	5,005,609.62	.00	44,442.81	.00	5,050,052.43	.00	.00	.00	5,050,052.43
	TOTAL	.717600	23,867,277.00	.00	211,909.13	.00	24,079,186.13	84.26	.00	.00	24,079,270.39
2020	M & O	.567100	284,474.24	.00	60,206.83	.00	344,681.07	59,096.63	.00	.00	403,777.70
	I & S	.150500	75,495.24	.00	15,978.03	.00	91,473.27	.00	.00	.00	91,473.27
	TOTAL	.717600	359,969.48	.00	76,184.86	.00	436,154.34	59,096.63	.00	.00	495,250.97
2019	M & O	.567100	76,930.90	.00	24,647.28	.00	101,578.18	17,426.33	.00	.00	119,004.51
	I & S	.150500	20,416.22	.00	6,540.95	.00	26,957.17	.00	.00	.00	26,957.17
	TOTAL	.717600	97,347.12	.00	31,188.23	.00	128,535.35	17,426.33	.00	.00	145,961.68
2018	M & O	.567100	23,862.07	.00	10,649.97	.00	34,512.04	5,223.08	.00	.00	39,735.12
	I & S	.081900	3,446.16	.00	1,538.04	.00	4,984.20	.00	.00	.00	4,984.20
	TOTAL	.649000	27,308.23	.00	12,188.01	.00	39,496.24	5,223.08	.00	.00	44,719.32
2017	M & O	.567100	11,417.27	.00	8,692.98	.00	20,110.25	3,668.67	.00	.00	23,778.92
	I & S	.081900	1,648.82	.00	1,255.48	.00	2,904.30	.00	.00	.00	2,904.30
	TOTAL	.649000	13,066.09	.00	9,948.46	.00	23,014.55	3,668.67	.00	.00	26,683.22
2016	M & O	.582100	9,850.17	.00	5,839.73	.00	15,689.90	2,080.99	.00	.00	17,770.89
	I & S	.071900	1,216.68	.00	721.30	.00	1,937.98	.00	.00	.00	1,937.98
	TOTAL	.654000	11,066.85	.00	6,561.03	.00	17,627.88	2,080.99	.00	.00	19,708.87
2015	M & O	.582100	6,749.13	.00	3,972.43	.00	10,721.56	1,014.69	.00	.00	11,736.25
	I & S	.071900	833.70	.00	490.63	.00	1,324.33	.00	.00	.00	1,324.33
	TOTAL	.654000	7,582.83	.00	4,463.06	.00	12,045.89	1,014.69	.00	.00	13,060.58
2014	M & O	.608100	5,431.19	.00	3,826.39	.00	9,257.58	970.05	.00	.00	10,227.63
	I & S	.071900	642.21	.00	452.41	.00	1,094.62	.00	.00	.00	1,094.62
	TOTAL	.680000	6,073.40	.00	4,278.80	.00	10,352.20	970.05	.00	.00	11,322.25
2013	M & O	.605000	4,482.92	.00	3,417.76	.00	7,900.68	459.64	.00	.00	8,360.32
	I & S	.075000	555.76	.00	423.73	.00	979.49	.00	.00	.00	979.49
	TOTAL	.680000	5,038.68	.00	3,841.49	.00	8,880.17	459.64	.00	.00	9,339.81
2012	M & O	.602600	3,579.72	.00	3,328.38	.00	6,908.10	358.10	.00	.00	7,266.20
	I & S	.077400	459.80	.00	427.52	.00	887.32	.00	.00	.00	887.32
	TOTAL	.680000	4,039.52	.00	3,755.90	.00	7,795.42	358.10	.00	.00	8,153.52
2011	M & O	.602100	3,037.22	.00	3,250.61	.00	6,287.83	811.82	.00	.00	7,099.65
	I & S	.077900	392.99	.00	420.56	.00	813.55	.00	.00	.00	813.55
	TOTAL	.680000	3,430.21	.00	3,671.17	.00	7,101.38	811.82	.00	.00	7,913.20
2010	M & O	.601800	2,379.95	.00	2,685.58	.00	5,065.53	587.46	.00	.00	5,652.99
	I & S	.078200	309.26	.00	348.98	.00	658.24	.00	.00	.00	658.24
	TOTAL	.680000	2,689.21	.00	3,034.56	.00	5,723.77	587.46	.00	.00	6,311.23

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 TC298-D SELECTION: SYSTEM
 RECEIPT DATE: ALL
 LOCATION: LOCATION NAME NOT FOUND

TAX COLLECTION SYSTEM
 DEPOSIT DISTRIBUTION
 FROM: 07/01/2021 THRU 03/31/2022
 JURISDICTION: 0033 CITY OF PHARR

PAGE: 59
 INCLUDES AG ROLLBACK

YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2009	M & O	.601800	2,246.32	.00	2,903.10	.00	5,149.42	646.17	.00	.00	5,795.59
	I & S	.078200	291.88	.00	377.23	.00	669.11	.00	.00	.00	669.11
	TOTAL	.680000	2,538.20	.00	3,280.33	.00	5,818.53	646.17	.00	.00	6,464.70
2008	M & O	.602940	2,198.11	.00	2,960.08	.00	5,158.19	347.69	.00	.00	5,505.88
	I & S	.078910	287.69	.00	387.38	.00	675.07	.00	.00	.00	675.07
	TOTAL	.681850	2,485.80	.00	3,347.46	.00	5,833.26	347.69	.00	.00	6,180.95
2007	M & O	.596130	1,382.33	.00	1,990.04	.00	3,372.37	375.57	.00	.00	3,747.94
	I & S	.086990	201.72	.00	290.41	.00	492.13	.00	.00	.00	492.13
	TOTAL	.683120	1,584.05	.00	2,280.45	.00	3,864.50	375.57	.00	.00	4,240.07
2006	M & O	.593130	1,139.46	.00	1,802.52	.00	2,941.98	365.09	.00	.00	3,307.07
	I & S	.089990	172.86	.00	273.46	.00	446.32	.00	.00	.00	446.32
	TOTAL	.683120	1,312.32	.00	2,075.98	.00	3,388.30	365.09	.00	.00	3,753.39
2005	M & O	.593130	940.71	.00	1,379.41	.00	2,320.12	85.28	.00	.00	2,405.40
	I & S	.089990	142.71	.00	209.28	.00	351.99	.00	.00	.00	351.99
	TOTAL	.683120	1,083.42	.00	1,588.69	.00	2,672.11	85.28	.00	.00	2,757.39
2004	M & O	.601650	1,761.45	.00	2,897.44	.00	4,658.89	172.42	.00	.00	4,831.31
	I & S	.081470	238.50	.00	392.32	.00	630.82	.00	.00	.00	630.82
	TOTAL	.683120	1,999.95	.00	3,289.76	.00	5,289.71	172.42	.00	.00	5,462.13
2003	M & O	.596220	979.92	.00	1,911.50	.00	2,891.42	104.53	.00	.00	2,995.95
	I & S	.086900	142.82	.00	278.62	.00	421.44	.00	.00	.00	421.44
	TOTAL	.683120	1,122.74	.00	2,190.12	.00	3,312.86	104.53	.00	.00	3,417.39
2002	M & O	.590210	555.77	.00	1,116.69	.00	1,672.46	133.73	.00	.00	1,806.19
	I & S	.099790	93.95	.00	188.79	.00	282.74	.00	.00	.00	282.74
	TOTAL	.690000	649.72	.00	1,305.48	.00	1,955.20	133.73	.00	.00	2,088.93
2001	M & O	.564720	507.19	.00	959.43	.00	1,466.62	119.21	.00	.00	1,585.83
	I & S	.097590	87.64	.00	165.79	.00	253.43	.00	.00	.00	253.43
	TOTAL	.662310	594.83	.00	1,125.22	.00	1,720.05	119.21	.00	.00	1,839.26
2000	M & O	.533960	564.91	.00	1,134.26	.00	1,699.17	138.20	.00	.00	1,837.37
	I & S	.108350	114.63	.00	230.16	.00	344.79	.00	.00	.00	344.79
	TOTAL	.642310	679.54	.00	1,364.42	.00	2,043.96	138.20	.00	.00	2,182.16
1999	M & O	.529360	334.45	.00	737.67	.00	1,072.12	145.76	.00	.00	1,217.88
	I & S	.112950	71.36	.00	157.41	.00	228.77	.00	.00	.00	228.77
	TOTAL	.642310	405.81	.00	895.08	.00	1,300.89	145.76	.00	.00	1,446.65
1998	M & O	.505610	361.67	.00	840.76	.00	1,202.43	160.94	.00	.00	1,363.37
	I & S	.124390	88.96	.00	206.83	.00	295.79	.00	.00	.00	295.79
	TOTAL	.630000	450.63	.00	1,047.59	.00	1,498.22	160.94	.00	.00	1,659.16

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 TC298-D SELECTION: SYSTEM
 RECEIPT DATE: ALL
 LOCATION: LOCATION NAME NOT FOUND

TAX COLLECTION SYSTEM
 DEPOSIT DISTRIBUTION
 FROM: 07/01/2021 THRU 03/31/2022
 JURISDICTION: 0033 CITY OF PHARR

PAGE: 60
 INCLUDES AG ROLLBACK

YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
1997	M & O	.524810	64.51	.00	194.17	.00	258.68	44.36	.00	.00	303.04
	I & S	.075190	9.24	.00	27.82	.00	37.06	.00	.00	.00	37.06
	TOTAL	.600000	73.75	.00	221.99	.00	295.74	44.36	.00	.00	340.10
1996	M & O	.516090	94.35	.00	266.20	.00	360.55	40.61	.00	.00	401.16
	I & S	.083910	15.34	.00	43.28	.00	58.62	.00	.00	.00	58.62
	TOTAL	.600000	109.69	.00	309.48	.00	419.17	40.61	.00	.00	459.78
1995	M & O	.510030	130.03	.00	360.16	.00	490.19	41.79	.00	.00	531.98
	I & S	.089970	22.94	.00	63.53	.00	86.47	.00	.00	.00	86.47
	TOTAL	.600000	152.97	.00	423.69	.00	576.66	41.79	.00	.00	618.45
1994	M & O	.471740	116.19	.00	337.22	.00	453.41	40.82	.00	.00	494.23
	I & S	.098260	24.21	.00	70.24	.00	94.45	.00	.00	.00	94.45
	TOTAL	.570000	140.40	.00	407.46	.00	547.86	40.82	.00	.00	588.68
1993	M & O	.465440	91.20	.00	316.10	.00	407.30	74.82	.00	.00	482.12
	I & S	.104560	20.48	.00	71.02	.00	91.50	.00	.00	.00	91.50
	TOTAL	.570000	111.68	.00	387.12	.00	498.80	74.82	.00	.00	573.62
1992	M & O	.447640	70.86	.00	250.76	.00	321.62	58.07	.00	.00	379.69
	I & S	.112360	17.79	.00	62.95	.00	80.74	.00	.00	.00	80.74
	TOTAL	.560000	88.65	.00	313.71	.00	402.36	58.07	.00	.00	460.43
1991	M & O	.464340	29.98	.00	111.84	.00	141.82	25.66	.00	.00	167.48
	I & S	.095660	6.18	.00	23.04	.00	29.22	.00	.00	.00	29.22
	TOTAL	.560000	36.16	.00	134.88	.00	171.04	25.66	.00	.00	196.70
1990	M & O	.473940	30.61	.00	117.87	.00	148.48	26.79	.00	.00	175.27
	I & S	.096060	6.21	.00	23.89	.00	30.10	.00	.00	.00	30.10
	TOTAL	.570000	36.82	.00	141.76	.00	178.58	26.79	.00	.00	205.37
ALL	M & O		19,307,462.18	.00	320,571.48	.00	19,628,033.66	94,929.23	.00	.00	19,722,962.89
ALL	I & S		5,113,083.57	.00	76,583.89	.00	5,189,667.46	.00	.00	.00	5,189,667.46
ALL	TOTAL		24,420,545.75	.00	397,155.37	.00	24,817,701.12	94,929.23	.00	.00	24,912,630.35
DLQ	M & O		445,794.80	.00	153,105.16	.00	598,899.96	94,844.97	.00	.00	693,744.93
DLQ	I & S		107,473.95	.00	32,141.08	.00	139,615.03	.00	.00	.00	139,615.03
DLQ	TOTAL		553,268.75	.00	185,246.24	.00	738,514.99	94,844.97	.00	.00	833,359.96
CURR	M & O		18,861,667.38	.00	167,466.32	.00	19,029,133.70	84.26	.00	.00	19,029,217.96
CURR	I & S		5,005,609.62	.00	44,442.81	.00	5,050,052.43	.00	.00	.00	5,050,052.43
CURR	TOTAL		23,867,277.00	.00	211,909.13	.00	24,079,186.13	84.26	.00	.00	24,079,270.39

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TAX COLLECTION SYSTEM
TAX COLLECTOR MONTHLY REPORT
FROM 10/01/2021 TO 03/31/2022

EXCLUDES AG ROLLBACK

PAGE: 24

FISCAL START: 10/01/2021 END: 09/30/2022 JURISDICTION: 0033 CITY OF PHARR

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE	TAX RATE	TAX LEVY	PAID ACCTS
	-----	-----	-----	-----	-----	-----
CURRENT YEAR	3,586,255,062	89,919,818	3,676,174,880	00.717600	25,777,932.72	24,636
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YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL
	-----	-----	-----	-----	-----	-----	-----	-----
2021	25,143,252.18	634,680.54	634,680.54	23,867,277.00	23,867,277.00	1,910,655.72	92.59	0.00
2020	885,838.78	46,667.04-	46,667.04-	358,244.02	358,244.02	480,927.72	42.69	1,350.13-
2019	403,409.47	8,269.03-	8,269.03-	87,905.29	87,905.29	307,235.15	22.25	1,457.98-
2018	221,459.55	7,864.01-	7,864.01-	22,523.09	22,523.09	191,072.45	10.54	537.92-
2017	167,002.75	8,550.34-	8,550.34-	13,066.09	13,066.09	145,386.32	8.25	1,557.40-
2016	123,819.01	484.69-	484.69-	11,066.85	11,066.85	112,267.47	8.97	406.21-
2015	106,458.56	465.95-	465.95-	7,582.83	7,582.83	98,409.78	7.15	465.95-
2014	93,480.17	381.43-	381.43-	6,073.40	6,073.40	87,025.34	6.52	381.43-
2013	73,869.22	362.94-	362.94-	5,038.68	5,038.68	68,467.60	6.85	362.94-
2012	71,404.71	429.99-	429.99-	4,039.52	4,039.52	66,935.20	5.69	429.99-
2011	69,791.20	462.63-	462.63-	3,430.21	3,430.21	65,898.36	4.95	462.63-
2010	68,778.83	289.87-	289.87-	2,689.21	2,689.21	65,799.75	3.93	289.87-
2009	68,369.78	23.32-	23.32-	2,538.20	2,538.20	65,808.26	3.71	23.32-
2008	54,696.71	.00	0.00	2,485.80	2,485.80	52,210.91	4.54	0.00
2007	47,967.29	.00	0.00	1,584.05	1,584.05	46,383.24	3.30	0.00
2006	42,640.85	.00	0.00	1,312.32	1,312.32	41,328.53	3.08	0.00
2005	38,879.35	.00	0.00	1,083.42	1,083.42	37,795.93	2.79	0.00
2004	38,994.10	.00	0.00	1,999.95	1,999.95	36,994.15	5.13	0.00
2003	30,307.37	.00	0.00	1,122.74	1,122.74	29,184.63	3.70	0.00
2002	28,043.64	.00	0.00	649.72	649.72	27,393.92	2.32	0.00
2001	21,334.51	.00	0.00	594.83	594.83	20,739.68	2.79	0.00
2000	95,245.42	.00	0.00	2,286.10	2,286.10	92,959.32	2.40	0.00
****	27,895,043.45	560,429.30	560,429.30	24,404,593.32	24,404,593.32	4,050,879.43		7,725.77-

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TAX COLLECTION SYSTEM
TAX COLLECTOR MONTHLY REPORT
FROM 10/01/2021 TO 03/31/2022

AG ROLLBACK ONLY

PAGE: 13

FISCAL START: 10/01/2021 END: 09/30/2022 JURISDICTION: 0033 CITY OF PHARR

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE	TAX RATE	TAX LEVY	PAID ACCTS
	-----	-----	-----	-----	-----	-----
CURRENT YEAR	0	0	0	00.717600	1,725.46	1
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YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL
	-----	-----	-----	-----	-----	-----	-----	-----
2020	0.00	1,725.46	1,725.46	1,725.46	1,725.46	0.00		0.00
2019	6,958.36	2,483.47	2,483.47	9,441.83	9,441.83	0.00		0.00
2018	0.00	4,785.14	4,785.14	4,785.14	4,785.14	0.00		0.00
2017	0.00	.00	0.00	0.00	0.00	0.00		0.00
****	6,958.36	8,994.07	8,994.07	15,952.43	15,952.43	0.00		0.00

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TAX COLLECTION SYSTEM
TAX COLLECTOR MONTHLY REPORT
FROM 10/01/2021 TO 03/31/2022

PAGE: 24
INCLUDES AG ROLLBACK

FISCAL START: 10/01/2021 END: 09/30/2022 JURISDICTION: 0033 CITY OF PHARR

	CERT TAXABLE VALUE		ADJUSTMENTS	ADJ TAX VALUE	TAX RATE	TAX LEVY	PAID ACCTS	
	-----		-----	-----	-----	-----	-----	
CURRENT YEAR	3,586,255,062		89,919,818	3,676,174,880	00.717600	25,777,932.72	24,636	
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YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL

2021	25,143,252.18	634,680.54	634,680.54	23,867,277.00	23,867,277.00	1,910,655.72	92.59	0.00
2020	885,838.78	44,941.58-	44,941.58-	359,969.48	359,969.48	480,927.72	42.81	1,350.13-
2019	410,367.83	5,785.56-	5,785.56-	97,347.12	97,347.12	307,235.15	24.06	1,457.98-
2018	221,459.55	3,078.87-	3,078.87-	27,308.23	27,308.23	191,072.45	12.50	537.92-
2017	167,002.75	8,550.34-	8,550.34-	13,066.09	13,066.09	145,386.32	8.25	1,557.40-
2016	123,819.01	484.69-	484.69-	11,066.85	11,066.85	112,267.47	8.97	406.21-
2015	106,458.56	465.95-	465.95-	7,582.83	7,582.83	98,409.78	7.15	465.95-
2014	93,480.17	381.43-	381.43-	6,073.40	6,073.40	87,025.34	6.52	381.43-
2013	73,869.22	362.94-	362.94-	5,038.68	5,038.68	68,467.60	6.85	362.94-
2012	71,404.71	429.99-	429.99-	4,039.52	4,039.52	66,935.20	5.69	429.99-
2011	69,791.20	462.63-	462.63-	3,430.21	3,430.21	65,898.36	4.95	462.63-
2010	68,778.83	289.87-	289.87-	2,689.21	2,689.21	65,799.75	3.93	289.87-
2009	68,369.78	23.32-	23.32-	2,538.20	2,538.20	65,808.26	3.71	23.32-
2008	54,696.71	.00	0.00	2,485.80	2,485.80	52,210.91	4.54	0.00
2007	47,967.29	.00	0.00	1,584.05	1,584.05	46,383.24	3.30	0.00
2006	42,640.85	.00	0.00	1,312.32	1,312.32	41,328.53	3.08	0.00
2005	38,879.35	.00	0.00	1,083.42	1,083.42	37,795.93	2.79	0.00
2004	38,994.10	.00	0.00	1,999.95	1,999.95	36,994.15	5.13	0.00
2003	30,307.37	.00	0.00	1,122.74	1,122.74	29,184.63	3.70	0.00
2002	28,043.64	.00	0.00	649.72	649.72	27,393.92	2.32	0.00
2001	21,334.51	.00	0.00	594.83	594.83	20,739.68	2.79	0.00
2000	95,245.42	.00	0.00	2,286.10	2,286.10	92,959.32	2.40	0.00
****	27,902,001.81	569,423.37	569,423.37	24,420,545.75	24,420,545.75	4,050,879.43		7,725.77-

TAX COLLECTION SYSTEM
 DEPOSIT DISTRIBUTION
 JURISDICTION SUMMARY

FROM: 03/01/2022 THRU 03/31/2022

UPDATE MODE

JURISDICTION: ALL

ACCOUNT	YEAR	DEPOSIT	LEVY COLLECTED	RENDITION PENALTY	P & I COLLECTED	RENDITION P & I	RENDITION DISCOUNT	APPRAISAL COMMISSION	DISBURSEMENT AMOUNT
CURR FOR 0029 CITY OF HIDALGO			11,019.60	1,019.01	991.75	91.71	0.00	55.54	11,955.81
BY COUNTY 108			11,019.60	1,019.01	991.75	91.71	0.00	55.54	11,955.81
DELQ FOR 0029 CITY OF HIDALGO			37.50	5.47	9.51	1.38	0.00	0.34	46.67
BY COUNTY 108			37.50	5.47	9.51	1.38	0.00	0.34	46.67
TOTAL FOR 0029 CITY OF HIDALGO			11,057.10	1,024.48	1,001.26	93.09	0.00	55.88	12,002.48
BY COUNTY 108			11,057.10	1,024.48	1,001.26	93.09	0.00	55.88	12,002.48
CURR FOR 0032 CITY OF MISSION			5,546.50	529.97	457.49	43.44	0.00	28.62	5,975.37
BY COUNTY 108			5,546.50	529.97	457.49	43.44	0.00	28.62	5,975.37
DELQ FOR 0032 CITY OF MISSION			1,507.75	143.19	439.35	42.77	0.00	9.31	1,937.79
BY COUNTY 108			1,507.75	143.19	439.35	42.77	0.00	9.31	1,937.79
TOTAL FOR 0032 CITY OF MISSION			7,054.25	673.16	896.84	86.21	0.00	37.93	7,913.16
BY COUNTY 108			7,054.25	673.16	896.84	86.21	0.00	37.93	7,913.16
CURR FOR 0033 CITY OF PHARR			10,238.69	1,011.34	886.01	87.50	0.00	54.97	11,069.73
BY COUNTY 108			10,238.69	1,011.34	886.01	87.50	0.00	54.97	11,069.73
DELQ FOR 0033 CITY OF PHARR			1,428.78	177.50	494.76	61.19	0.00	11.94	1,911.60
BY COUNTY 108			1,428.78	177.50	494.76	61.19	0.00	11.94	1,911.60
TOTAL FOR 0033 CITY OF PHARR			11,667.47	1,188.84	1,380.77	148.69	0.00	66.91	12,981.33
BY COUNTY 108			11,667.47	1,188.84	1,380.77	148.69	0.00	66.91	12,981.33
CURR FOR 0034 CITY OF PENITAS			1,303.67	118.52	116.29	10.58	0.00	6.46	1,413.50
BY COUNTY 108			1,303.67	118.52	116.29	10.58	0.00	6.46	1,413.50
DELQ FOR 0034 CITY OF PENITAS			0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL FOR 0034 CITY OF PENITAS			1,303.67	118.52	116.29	10.58	0.00	6.46	1,413.50
BY COUNTY 108			1,303.67	118.52	116.29	10.58	0.00	6.46	1,413.50
CURR FOR 0035 CITY OF LA JOYA			110.08	10.01	9.91	0.90	0.00	0.54	119.45
BY COUNTY 108			110.08	10.01	9.91	0.90	0.00	0.54	119.45
DELQ FOR 0035 CITY OF LA JOYA			82.02	7.46	21.33	1.94	0.00	0.47	102.88
BY COUNTY 108			82.02	7.46	21.33	1.94	0.00	0.47	102.88
TOTAL FOR 0035 CITY OF LA JOYA			192.10	17.47	31.24	2.84	0.00	1.01	222.33
BY COUNTY 108			192.10	17.47	31.24	2.84	0.00	1.01	222.33
CURR FOR 0036 CITY OF PROGRESO			60.79	5.53	5.07	0.46	0.00	0.31	65.55
BY COUNTY 108			60.79	5.53	5.07	0.46	0.00	0.31	65.55
DELQ FOR 0036 CITY OF PROGRESO			50.15	2.92	25.08	1.46	0.00	0.22	75.01
BY COUNTY 108			50.15	2.92	25.08	1.46	0.00	0.22	75.01
TOTAL FOR 0036 CITY OF PROGRESO			110.94	8.45	30.15	1.92	0.00	0.53	140.56
BY COUNTY 108			110.94	8.45	30.15	1.92	0.00	0.53	140.56
CURR FOR 0037 CITY OF SAN JUAN			4,306.95	629.17	386.82	56.56	0.00	34.33	4,659.44
BY COUNTY 108			4,306.95	629.17	386.82	56.56	0.00	34.33	4,659.44
DELQ FOR 0037 CITY OF SAN JUAN			654.73	69.37	187.92	20.57	0.00	4.50	838.15
BY COUNTY 108			654.73	69.37	187.92	20.57	0.00	4.50	838.15
TOTAL FOR 0037 CITY OF SAN JUAN			4,961.68	698.54	574.74	77.13	0.00	38.83	5,497.59
BY COUNTY 108			4,961.68	698.54	574.74	77.13	0.00	38.83	5,497.59



AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 6.A.

DATE SUBMITTED: April 5, 2022

MEETING DATE: April 18, 2022

FROM: Hilda Pedraza, City Clerk

DEPARTMENT: Parks

DIRECTOR: Sergio Alanis

Agenda Item: Consideration and action, if any, on Ordinance amending Ordinance No. O-2019-32 increasing the membership of the Keep Pharr Beautiful Committee from five (5) to seven (7) members. **(3rd and Final Reading)**

Classification: Consent

(* If closed session, City Attorney must review and approve.)

Issue: Staff is requesting an increase in board members for the Keep Pharr Beautiful Committee from five (5) to seven (7) members.

Fiscal Consideration: N/A

Staff Recommendation: Staff recommends approval.

Alternatives: N/A

Exclude Material from Public Packet? No

Reason: N/A

ROUTING:

Hilda Pedraza

Sergio Alanis

Annie Reeves

Patricia Rigney

City Management Office

Created/Initiated - 4/5/2022

Approved - 4/5/2022

Approved - 4/5/2022

Approved - 4/5/2022

Final Approval - 4/14/2022

ORDINANCE NO. O-2022-__

AN ORDINANCE AMENDING ORDINANCE NO. O-2019-32, O-2017-32, O-2017-23, O-76-09, AND O-72-20 INCREASING THE MEMBERSHIP OF THE KEEP PHARR BEAUTIFUL COMMITTEE FROM FIVE (5) TO SEVEN (7); COMBINING ALL ORDINANCES INTO ONE; PROVIDING FOR A QUORUM; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Pharr Beautification Committee was created by Ordinance No. 72-20; and

WHEREAS, the name of Pharr Beautification Committee was changed to Keep Pharr Beautiful Committee by Ordinance O-2019-32 on August 19, 2019; and

WHEREAS, currently the Keep Pharr Beautiful Committee consists of five (5) members; and

WHEREAS, the number of members shall be increased from five (5) to seven (7); and

WHEREAS, all existing and prior ordinances are hereby repealed and replaced to read as follows:

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PHARR, TEXAS, THAT:

SECTION 1 CREATION AND PURPOSE

Sec. 1.01: CREATION AND COMPOSITION

There is hereby created a Pharr Beautification Committee, which shall be composed of no more than seven (7) members. Such members shall be appointed by the Pharr Board of Commissioners.

Sec. 1.02: PURPOSE AND DUTIES

The Keep Pharr Beautiful Committee shall be an advisory board. It may establish its own rules and regulation for its meetings and proceedings. It shall promote and encourage the beautification of the City through the participation of the City, the citizens of Pharr, and local business concerns in individual and cooperative efforts. It shall actively pursue and promote the development of civic pride and shall coordinate the efforts of all who will work for the common purpose of improving the beauty and cleanliness of the City.

SECTION 2. Modification to Advisory Board Membership:

Sec. 2.01: ARTICLE 3. MEMBERSHIP

- (A) The Pharr Board of Commissioners shall appoint **seven (7) members** to the Keep Pharr Beautiful Committee.
- (B) Members serve at the pleasure of the city council. Any member may be removed from their position on the committee for any reason, or for no reason, by a majority vote of the Board of Commissioners.
- (C) Members shall be appointed for a term of one, two and three years on a rotating basis and removable by the appointing authority. The Board of Commissioners shall appoint **three (3) one (1) year members, three (3) two (2) year members** and one (1) three (3) year member. All cases to be heard and ruled upon will always be heard by a minimum of **four (4) members. Four (4) of the regular voting members constitutes a quorum.**
- (D) An individual member may not act in an official capacity except through the action of the committee. When a member is called upon to voice opinions at public or private functions, he/she shall indicate that he/she is speaking for himself/herself and not representing the committee or the City of Pharr unless a formal action by the Keep Pharr Beautiful Committee or Board of Commissioners has been taken on the specific issue.
- (E) A member who is absent for three consecutive regular meetings or half of all regular meetings in a “rolling” twelve-month timeframe automatically vacates the member’s position. This does not apply to an absence due to illness or injury of the committee member, an illness or injury of a committee member’s immediate family member, or the birth or adoption of the member’s child for 90 days after the event. The committee member must notify the Director of Parks and Recreation of the reason for the absence no later than the date of the next regular meeting of the committee. Failure to notify before the next regular meeting of the committee will result in an unexcused absence.
- (F) At each meeting, each committee member shall sign an attendance sheet which indicates that the member does not have a conflict of interest with any item on that agenda or identifies each agenda item on which the member has a conflict of interest. Failure to sign the sheet results in the member being counted as absent and his/her votes are not counted.
- (G) A committee member who seeks to resign from the committee shall submit a written resignation to the chairman. If possible, the resignation should allow for a thirty-day notice so the Board of Commissioners can appoint a replacement.
- (H) All committee members must be a resident or a business owner within the City of Pharr.
- (I) The Director of Parks and Recreation and the Assistant Director of Parks and Recreation shall be ex officio members of the Keep Pharr Beautiful Committee

without a right to vote but will provide technical support and expertise to the Commission. The provisions of "Article 3. Membership. Letter (E)" do not apply to ex officio members.

- (J) Committee members serve without compensation. The committee and its members have no authority to expend funds or to incur or make an obligation on behalf of the City of Pharr unless authorized and approved by the Board of Commissioners. Committee members may be reimbursed for expenses authorized and approved by the Board of Commissioners.
- (K) Members will comply with City Ordinances, Rules and Policies applicable to the committee and its members, including but not limited to ethics, courtesy and respect. Members are prohibited from engaging in conduct that adversely reflects on the City, bears a negative impact on public perception of the City, its employees or elected and appointed officials.
- (L) Members shall not have any administrative or enforcement authority in the day-to-day operations of the City. They shall have no authority or right to enforce any rule, ordinance, or regulation of the City. Any violations are violation of this ordinance.

Sec. 2.02: ARTICLE 4. OFFICERS.

- (A) The officers of the committee shall consist of a chairman and a vice-chairman and secretary.
- (B) The chairman is appointed by the Mayor. All other members are appointed by the Board of Commissioners during the annual appointment process. Should the Mayor fail to recommend a chairman for each committee or commission, a majority of the Board of Commissioners plus one (Super-majority) may approve appointment of a chairman. The other officers (except for parliamentarian) shall be elected annually by a majority vote of the commission at the first regular meeting in January. In the event a current officer becomes ineligible to serve as an officer, the commission may hold an emergency election as needed for all officers.
- (C) The term of office shall be one year, beginning January and ending December. An officer may continue to serve until a successor is elected. A person may not serve as an officer in a designated position of a commission for more than three consecutive one-year terms. A person who has served as an officer in a designated position of a committee for three consecutive terms is not eligible for re-election to that designated office until the expiration of two years after the last date of the person's service in that office.
- (D) A member may not hold more than two offices at a time.

Sec. 2.03: ARTICLE 5. DUTIES OF OFFICERS.

- (A) The chair shall preside at committee meetings, appoint all sub-committees, and represent the committee at ceremonial functions.
- (B) In the absence of the chairman, the vice-chair shall perform all duties of the chair.
- (C) In the absence of both the chairman and the vice-chair the secretary shall perform the duties of the chairman.
- (D) In the absence of all officers the most senior member by appointment date shall chair the meeting.

Sec. 2.04: ARTICLE 6. AGENDAS.

- (A) Items may be placed on the agenda by the chairman, Director of Parks and Recreation, the City Manager, or his designee or at the request of two or more committee members. The requests must be at least five days before the meeting. Committee members must consult with and receive input from the Director of Parks and Recreation. The Director shall seek consultation from the City attorney as to the legalities of the agenda item(s) and whether it is within the committee's discretion.
- (B) Staff shall assemble all regular meeting items as directed by City ordinance and internal city policy.
- (C) Posting of the agenda must comply with Texas Government Code Chapter 551 (Texas Open Meetings Act).

Sec. 2.05: ARTICLE 7. MEETINGS.

- (A) The committee meetings shall comply with Texas Government Code Chapter 551 (Texas Open Meetings Act).
- (B) Committee meetings shall be governed by Robert's Rules of Order.
- (C) All meeting of the committee shall be open to the public. The committee shall keep minutes of its proceedings showing the vote of each member on each question, or if absent or failing to vote. The Director Parks and Recreation shall be custodian and possessor of records and minutes of the meetings.
- (D) The committee shall meet at least twice a month. In November of each year, the committee shall adopt a schedule of the meetings for the upcoming year, as composed by staff.
- (E) Special meetings may be called by the chairman or at the requested by three or more members. The call shall state the purpose of the meeting, the time and the date. A committee may not call a meeting in addition to its regular scheduled meetings as

identified in its adopted meeting schedule, more often than once a quarter, unless the meeting is required to comply with a statutory deadline, or a deadline established by Council.

- (F) If a quorum for a meeting does not convene within one-half hour of the posted time for the meeting, then the meeting may not be held.
- (G) An affirmative vote of at least 3 members must be made to approve any motion.
- (H) The chairman has the same voting privilege as any other member.
- (I) The committee shall allow citizens to address the committee on agenda items and during a period of time set aside for citizen communications. The chairman may limit a speaker to three minutes. In the interest of fairness to the applicants and appellants appearing before the committee and those appearing in opposition to the same, no discussion shall be held by a member or members of this committee with the applicant, appellant, or opposition, who is attempting to influence any committee member concerning the application or other matter involving an applicant or appellant before the committee either at home or office, or in person, by telephone, letter or electronic communication. All such discussions shall be held during a meeting at which the item is posted for discussion so that all members shall have the full benefit of such a discussion.
- (J) The Parks and Recreation staff shall prepare the committee minutes. The minutes of each committee meeting must include the vote of each member on each item before the committee and indicate whether a member is absent or failed to vote on an item.
- (K) The City Clerk shall retain agendas, approved minutes, internal review reports and bylaws. The Parks and Recreation Department shall retain all other committee documents. The documents are public record under Texas Local Government Code Chapter 552 (Texas Public Information Act).
- (L) Each person and committee member attending a committee meeting should observe proper decorum.
- (M) Debate and motions. Motions are usually classified in several ways:
 - (1) Main motion
 - (2) Subsidiary motion/Un-debatable motions;
 - (3) Privileged motions; and
 - (4) Fully-debatable motions.

A *Main Motion* is a motion that brings business before the committee. Main motions are made while no other motion is pending. Any of the subsidiary or privileged motions may be made while the main motion is pending, and in many cases these motions, if passed, will affect the committee's consideration of the main motion. A subsidiary or un-debatable

motion is a type of motion by which a deliberative assembly deals directly with a main motion prior to (or instead of) voting on the main motion itself. Subsidiary motions are motions such as to postpone indefinitely, amend and to table.

A *Subsidiary* or *Un-debatable* motion involves procedural questions that can be resolved without discussion, such as tabling a main motion, moving the previous question, restricting further discussion of a main motion to a fixed number of minutes, postponing action, or referring an item under discussion to a committee. After a subsidiary or un-debatable motion is offered, the chairman must immediately take a vote, without discussion.

Privileged motions grant precedence over ordinary business. Such motions have limited debate permitted. They include setting the time of the next meeting, adjourn, recess or executive session. Any discussion of a privileged motion must be addressed to the motion itself. A motion to fix the time for adjourning the commission meeting, for example, might require limited debate as to the advisability of such a decision, but other points of discussion would be out of order.

Fully debatable motions are subject to unlimited discussion prior to a decision.

One of the most important principles of debate is that committee member's statements be directly relevant to the item under consideration. Committee members recognized by the chairman are given the floor only for the purpose of discussing the item then pending, and they are out of order if they depart from that item. "Debate" can easily evolve into statements of personal philosophy. As interesting though as these statements may seem to the speaker, such departures do not belong in a commission meeting.

Sec. 2.06: ARTICLE 10. AMENDMENT OF BYLAWS.

A bylaw amendment is not effective unless approved by the Board of Commissioners of the City of Pharr, Texas.

Sec. 2.07: DEBTS AND LIABILITY

The Committee shall not be authorized to create any debts or incur any liability on behalf of the City unless first authorized to do so by the Board of Commissioners.

SEC. 2.08: RESIDENCY REQUIREMENT

All members of boards, commissions and committees of the city of Pharr, shall be residents of the city of Pharr or non-resident tax-paying property owners of the city who reside within the extra-territorial jurisdiction of the city of Pharr, Texas. All Committee members shall serve staggered terms. The Board of Commissioners shall appoint two (2) one (1) year term members, two (2) two (2) year term members, and one (1) three (3) term member. The mayor shall appoint the Chairman of the Committee.

SECTION 3: Severability Clause

The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part thereof.

SECTION 4: Repealing Clause

All existing ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: Effective Date

The Ordinance shall take effect and be in force from and after its passage and approval on three (3) separate readings in accordance with Section 8, Article 3 of the Charter of the City of Pharr, Texas. Publication, if necessary, may also be in caption form as allowed under Section 9 of the Pharr City Charter.

SECTION 6: Penalty Clause

Any violation of this ordinance shall constitute a voluntary and automatic resignation from the Pharr Keep Pharr Beautiful Committee.

SECTION 7: Proper Notice and Meeting.

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

APPROVED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PHARR, TEXAS, on this the 21st day of March, 2022, A.D.

CITY OF PHARR

AMBROSIO HERNANDEZ, MAYOR

ATTEST:

HILDA PEDRAZA, CITY CLERK

**APPROVED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE
CITY OF PHARR, TEXAS**, on this the 4th day of April, 2022, A.D.

CITY OF PHARR

AMBROSIO HERNANDEZ, MAYOR

ATTEST:

HILDA PEDRAZA, CITY CLERK

**APPROVED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE
CITY OF PHARR, TEXAS**, on this the ____ day of _____, 2022 A.D.

CITY OF PHARR

AMBROSIO HERNANDEZ, MAYOR

ATTEST:

HILDA PEDRAZA, CITY CLERK



AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 6.B.

DATE SUBMITTED: April 5, 2022

MEETING DATE: April 18, 2022

FROM: Hilda Pedraza, City Clerk

DEPARTMENT: IT

DIRECTOR: Jose Pena

Agenda Item: Consideration and action, if any, on Ordinance amending Ordinance O-2021-44 for modifications to the fee schedule for municipal fiber optic services. *(2nd Reading)*

Classification: Consent

(* If closed session, City Attorney must review and approve.)

Issue: Additional items are being added to the fee schedule in order to account for adding wireless mesh devices in homes when needed, as well as fees for replacing equipment if not returned when service is discontinued by customers.

Fiscal Consideration: NA

Staff Recommendation: Staff recommends approval.

Alternatives: NA

Exclude Material from Public Packet? No

Reason: NA

ROUTING:

Hilda Pedraza

Jose Pena

Anali Alanis

Karla Saavedra

Patricia Rigney

City Management Office

Created/Initiated - 4/5/2022

Approved - 4/13/2022

Approved - 4/13/2022

Approved - 4/13/2022

Approved - 4/13/2022

Final Approval - 4/14/2022

ORDINANCE NO. O-2022-

AN ORDINANCE AMENDING ORDINANCE O-2021-44 CREATING AND ADOPTING THE MUNICIPAL FIBER OPTIC SERVICE FEE SCHEDULE, PROVIDING FOR REPEALING OF CONFLICTING ORDINANCE(S) CLAUSE, AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Board of Commissioners of the City of Pharr desire to provide reliable, high-speed internet to the residents and businesses of Pharr, for the benefit and growth of economic and community goals; and

WHEREAS, the Board of Commissioners find that providing fiber-optic services will provide reliable, high-speed internet serves a public purpose; and

WHEREAS, the Board of Commissioners has approved a municipally owned fiber-optic broadband network to provide fast and reliable internet service to residential and commercial customers; and

WHEREAS, a community survey was conducted for residents and businesses to determine the appropriate monthly service rates; and

WHEREAS, home-ruled cities may take actions authorized by the City charter and not specifically prohibited or preempted by the Texas Constitution, state, or federal law; and

WHEREAS, Cities may regulate a range of local services to promote the general welfare of the City's residents; and

WHEREAS, the City, as a home-rule municipality, can provide a service and charge a user fee for its use; and

WHEREAS, the Board of Commissioners seeks to establish user fees for the cost of providing the services; and

WHEREAS, the City has adopted a schedule of fees, charges, expenses and a collection procedure for municipal fiber optic services and other such matters pertaining to this ordinance; and

WHEREAS, all existing and prior ordinances are hereby amended and reinstated to read as follows:

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PHARR, THAT:

SECTION 1: Ordinance No. 2022-___ is hereby adopted.

SECTION 2. RATES AND FEES.

A. FIBER OPTIC MONTHLY SERVICE RATES

1. Residential Monthly Rates

Residential	Speed (Mbps)	Monthly Rate
Blue Plan	500	\$25.00
Gold Plan	1,000	\$50.00

2. Small Business Commercial Monthly Rates – shall apply to small and medium sized businesses requiring a wireless modem.

Small Business	Speed (Mbps)	Monthly Rate
Gold Plan	200	\$100.00

3. Enterprise Commercial Monthly Rates – shall apply to businesses that require dedicated fiber connection.

Enterprise	Speed (Mbps)	Monthly Rate
Green Plan	200	\$250.00
Blue Plan	600	\$350.00
Gold Plan	1,000	\$500.00

B. DEPOSIT FEES FIRST MONTH SERVICE FEE

~~A deposit of one month service shall be made for residential, small business, and enterprise commercial connections to the city's broadband internet services. Deposit shall be reimbursed or applied to any unpaid bill after service is discontinued.~~

A payment for first month of service shall be made for residential, small business, and enterprise commercial connections to the city's broadband internet services prior to getting connected.

C. MISCELLANEOUS FEES

Type	Fee
No Premise Access	\$25.00
Missed Appointment	\$25.00
Reconnection	\$25.00
*Upgraded Wireless Access Point	\$5.00/month
Wireless Mesh Device	\$5.00/device/month
Equipment Fees if not returned	
UPS battery backup	\$65.00
Fiber ONT	\$120.00

Standard Wifi Access Point	\$100.00
Upgraded Wifi Access Point	\$165.00
Static IP Addresses	
One-time Setup	\$50.00
SmartPak 1 (1 useable)	\$5.00
SmartPak 2 (5 useable)	\$25.00
SmartPak 3 (13 useable)	\$65.00
SmartPak 4 (29 useable)	\$145.00

(*Note) – Standard modem is included at no charge.

SECTION 3: REPEALING CLAUSE.

All ordinances or parts of ordinances or conflict with this ordinance are hereby repealed.

SECTION 4: SEVERABILITY CLAUSE.

The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part thereof.

SECTION 5: EFFECTIVE DATE; PUBLICATION.

The Ordinance shall take effect and be in force from and after its passage and approval on three (3) separate readings in accordance with Section 8, Article 3 of the Charter of the City of Pharr, Texas.

Publication, if necessary, may also be in caption form as allowed under Section 9 of the Pharr City Charter.

SECTION 6: PROPER NOTICE AND MEETING.

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED ON THE FIRST READING BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF PHARR, TEXAS, on this the ____ day of ____ 2022.

CITY OF PHARR

AMBROSIO HERNANDEZ
MAYOR

ATTEST:

HILDA PEDRAZA, CITY CLERK

PASSED AND APPROVED ON THE SECOND READING BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF PHARR, TEXAS, on this the ____ day of ____, 2022.

CITY OF PHARR

AMBROSIO HERNANDEZ
MAYOR

ATTEST:

HILDA PEDRAZA, CITY CLERK

PASSED AND APPROVED ON THE THIRD AND FINAL READING BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF PHARR, TEXAS, on this the ____ day of ____, 2022.

CITY OF PHARR

AMBROSIO HERNANDEZ
MAYOR

ATTEST:

HILDA PEDRAZA, CITY CLERK



AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 6.C.

DATE SUBMITTED: April 11, 2022

MEETING DATE: April 18, 2022

FROM: Sergio Alanis, Parks & Recreation
Director

DEPARTMENT: Purchasing

DIRECTOR: Sergio Alanis, Ignacio
Amezcu

Agenda Item: Consideration and action, if any, authorizing City Manager to advertise for bids for City-Wide Ditch hydroseeding.

Classification: Consent

(* If closed session, City Attorney must review and approve.)

Issue: The Ditch-widening Project increased the size and volume of ditches the City maintains; however, banks need to be sodded with hydro-seed to keep them intact and prevent future erosion.

Fiscal Consideration: Not to exceed \$100,000.00

Staff Recommendation: Staff recommends outsourcing the project to a local landscape company.

Alternatives: NA

Exclude Material from Public Packet? No

Reason: NA

ROUTING:

Sergio Alanis
Ignacio Amezcua
Annie Reeves
Anali Alanis
Karla Saavedra
Patricia Rigney
City Management Office

Created/Initiated - 4/11/2022
Approved - 4/11/2022
Approved - 4/11/2022
Approved - 4/13/2022
Approved - 4/13/2022
Approved - 4/13/2022
Final Approval - 4/14/2022



AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 6.D.

DATE SUBMITTED: April 12, 2022

MEETING DATE: April 18, 2022

FROM: Ignacio Amezcua, Director

DEPARTMENT: Purchasing

DIRECTOR: Ignacio Amezcua

Agenda Item: Consideration and action, if any, authorizing City Manager to advertise for proposals for the City-Wide Debt Collection Service.

Classification: Consent

(* If closed session, City Attorney must review and approve.)

Issue: To improve the City debt collection, outsourcing this service

Fiscal Consideration: Not to exceed \$100,000

Staff Recommendation: Staff recommends going out for proposals for debt collection service

Alternatives: NA

Exclude Material from Public Packet? No

Reason: NA

ROUTING:

Ignacio Amezcua

Created/Initiated - 4/12/2022

Ignacio Amezcua

Approved - 4/12/2022

Patricia Rigney

Approved - 4/12/2022

Karla Saavedra

Approved - 4/13/2022

Anali Alanis

Approved - 4/13/2022

City Management Office

Final Approval - 4/14/2022



AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 6.E.

DATE SUBMITTED:

MEETING DATE: April 18, 2022

FROM: Hilda Pedraza, City Clerk

DEPARTMENT: Administration

DIRECTOR:

Agenda Item: Consideration and action, if any, on Development Services Cases:

Classification: Public Hearing

(* If closed session, City Attorney must review and approve.)

Issue:

Fiscal Consideration:

Staff Recommendation:

Alternatives:

Exclude Material from Public Packet? No

Reason:

ROUTING:

Hilda Pedraza
Karla Saavedra
Patricia Rigney
City Management Office

Created -



AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 6.E.1.

DATE SUBMITTED: April 12, 2022

MEETING DATE: April 18, 2022

FROM: Iris Mata, Secretary

DEPARTMENT: Development Services

DIRECTOR: Roland Gomez

Agenda Item: Howard Adams, d/b/a, South Texas Wastewater LLC., has filed with the Planning and Zoning Commission a request for a Change of Zone from General Business District (C) to Heavy Commercial District (H-C). The property is legally described as being Lots 5 & 6, Johnstone Supply Subdivision, Pharr, Hidalgo County, Texas. The property is physically located at 931 West Sharm Drive. **COZ#220317**

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue: Howard Adams, d/b/a, South Texas Wastewater LLC., has filed with the Planning and Zoning Commission a request for a Change of Zone from General Business District (C) to Heavy Commercial District (H-C). **COZ#220317**

Fiscal Consideration: N/A

Staff Recommendation: Development Services is recommending approval of the request to re-zone from General Business District (C) to Heavy Commercial District (H-C) as the property meets area requirements, has adequate ingress and egress. If approved, the owner must comply with all City Ordinances and City Department requirements.

The Planning and Zoning Commission voted unanimously to approve the request for a change of zone from General Business District (C) to Heavy Commercial District (H-C) subject to staff's recommendations.

Alternatives: N/A

Exclude Material from Public Packet? No

Reason: N/A

ROUTING:

Iris Mata
Patricia Rigney
Roland Gomez
City Management Office

Created/Initiated - 4/12/2022
Approved - 4/12/2022
Approved - 4/13/2022
Final Approval - 4/14/2022



STANDARDIZED RECOMMENDATION FORM

MEETING DATE: April 18, 2022

ROUTE TO BOARD:

☒ CITY COMMISSION

AGENDA ITEM: COZ:#220317

☐ PLANNING & ZONING COMMISSION

DATE SUBMITTED: March 4, 2022

1. **Applicant:** Howard Adams, d/b/a, South Texas Wastewater LLC.
2. **Requested Action:** Re-zoning request from General Business District (C) to Heavy Commercial District (H-C).
3. **Nature / Intent of Request:** In order to develop and construct an office with outside storage.

4. **Routing to Staff:**

A. Roland Gomez, Interim Director

[Signature]
Initials

4-12-22
Date

☒ Approval ☐ Denial

B. Planning Staff Recommendations

[Signature]
Initials

4-12-22
Date

☒ Approval ☐ Denial

C. Planning and Zoning Commission

Initials

04/11/2022
Date

☒ Approval ☐ Denial

D. City Attorney

Initials

Date

☐ Approval ☐ Denial

E. City Manager

Initials

Date

☐ Approval ☐ Denial



MEMORANDUM

DATE: MONDAY, APRIL 18, 2022

TO: MAYOR AND CITY COMMISSION

FROM: DEVELOPMENT SERVICES

THROUGH: EDWARD WYLIE, INTERIM CITY MANAGER

SUBJECT: Re-zoning Request: From General Business District (C) to Heavy Commercial District (H-C). The property is legally described as being Lots 5 & 6, Johnstone Supply Subdivision, Pharr, Hidalgo County, Texas. The property is physically located at 931 West Sharm Drive.

Comprehensive zoning and rezoning regulations and ordinances should be adopted and designed to facilitate, as much as possible, the following items:

1. To lessen congestion;
2. Secure safety from fire, panic and other dangers;
3. To promote health and general welfare;
4. To provide adequate light and air;
5. To protect the overcrowding of land and abutting traffic ways;
6. Avoid undue concentration of population, and;
7. To facilitate the adequate provisions of transportation, water, sewage, schools, parks, and other public requirements as per Local Government Code, Sect. 211.004.

DESCRIPTION OF PROPERTY:

Howard Adams, d/b/a, South Texas Wastewater LLC., has filed with the Planning and Zoning Commission a request for a Change of Zone from General Business District (C) to Heavy Commercial District (H-C). In order to develop and construct an office with outside storage.

The subject site is located on the south side of West Sharm Drive and has a physical address of 931 West Sharm Drive. The property is legally described as being Lots 5 and 6, Johnstone Supply Subdivision, Pharr, Hidalgo County, Texas.

The property fronts west Sharm Drive, a 50' to 60' local street with a posted speed limit of 20 to 30 miles per hour as identified in the City of Pharr's Thoroughfare Plan.

The property is currently zoned General Business District (C). The properties to the north, east and west were rezoned from Agricultural and/ or Open Space District (A-O) and Heavy Commercial District (H-C) to General Business District (C) on June 20, 1995. The property to the south was rezoned from Agricultural and/ or Open Space District (A-O) to Heavy Commercial District (H-C) on December 3, 1996. There have been no other zoning requests within the vicinity of the subject property since that time. The property is generally designated for industrial use in the Land Use Plan.

The Heavy Commercial District (H-C) is established to provide adequate space and site diversification for commercial establishments which would involve influences that would be objectionable in the other commercial districts or adjacent to residential districts. Included in this district are commercial uses that involve large volumes of truck traffic, outside operations and storage of materials and equipment, either for sale or as part of the business, excessive noise from heavy service operations, or any other possibly blighting influences. This district is commercial in nature but has some aspects that are similar to industrial uses. The noise, traffic, litter, late-night hours, outside storage of materials and equipment, and other possibly blighting influences require adequate buffering.

Six (6) letters were mailed out to the surrounding property owners and a legal notice was published in the Advance News Journal. Staff received no response to the letters or the legal notice.

Development Services is recommending approval of the request to re-zone from General Business District (C) to Heavy Commercial District (H-C) as the property meets area requirements, has adequate ingress and egress. If approved, the owner must comply with all City Ordinances and City Department requirements.

The Planning and Zoning Commission voted unanimously to approve the request for a change of zone from General Business District (C) to Heavy Commercial District (H-C) subject to staff's recommendations.

CITY COMMISSION OPTIONS:

1. **Approve the rezoning request;**
2. **Table the item for:**
 - a) **consideration by the full board;**
 - b) **additional information;**
 - c) **additional time for applicant and adjacent property owners to meet;**
3. **Disapprove the request.**



REQUEST FOR CHANGE OF ZONE & AMENDMENT TO LAND USE PLAN

Howard Adams, d/b/a, South Texas Wastewater LLC.
APPLICANT

General Business District (C)
CURRENT ZONE

931 West Sharm Drive
ADDRESS

Heavy Commercial District (H-C)

	YES	NO
1 Does the property meet the minimum area requirements for the proposed zone?	X	
2 Does the property have adequate ingress and egress?	X	
3 Will the change of zone be compatible with surrounding properties? (Zoning and Land Use)	X	
4 Is the property located along a major thoroughfare?		X
5 Will the property have adequate parking for the proposed use?	X	
6 Will the property have adequate landscaping as per City Ordinance?	X	
7 Will the zone change increase the volume of traffic?		X
8 Will a buffer be required?	X	
9 Is the proposed change in line with the Future Land Use Plan?		X

STAFF RECOMMENDATIONS:

Approval

Development Services is recommending approval of the request to re-zone from General Business District (C) to Heavy Commercial District (H-C) as the property meets area requirements and has adequate ingress and egress. If approved, the owner must comply with all City Ordinances and City Department requirements.

Nelly Terrazas Rojo
PREPARED BY

April 6, 2022
DATE

Proposed Change of Zone
931 W SHARM, LOTS 5 & 6, JOHNSTONE SUPPLY
SOUTH TEXAS WASTEWATER



The property within the boundary
is the ONLY property to be affected.
Solo la propiedad dentro de los
limites sera afectada.

Zoning

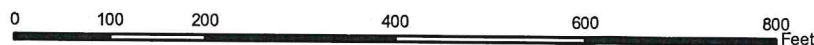
ZONE

- Agricultural Open Space
- Single Family
- Single Family Small Lot
- Residential Multi-Family
- Residential Multi-Family High Density
- Mobile Home

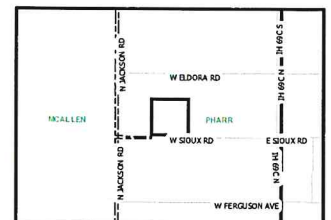
- Townhouse
- HUD Code
- Rail Road R.O.W
- Government Owned
- General Business
- Business District
- Drainage Easement
- Heavy Commercial
- Heavy Industrial
- Limited Industrial
- Neighborhood Commercial
- Office Professional
- PSJA ISD
- Hidalgo ISD
- Valley View ISD
- Planned Unit Development

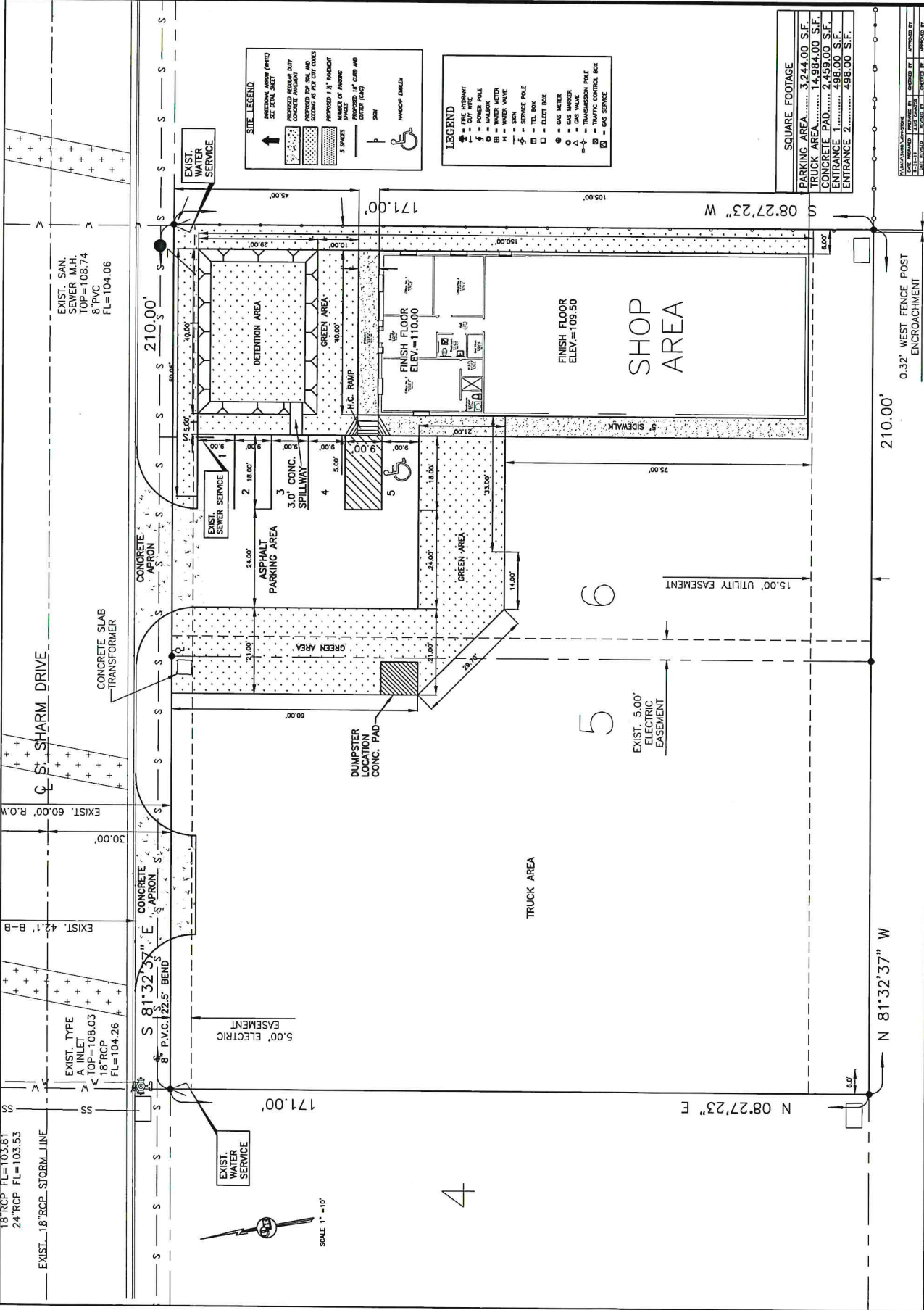
City of Pharr, Texas
Engineering Department
956.402.4242

Scale: 1 inch = 200 feet



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to verification by field survey or by the agency
responsible for maintaining the information.
This map is intended for general information only.







AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 6.E.2.

DATE SUBMITTED: April 12, 2022

MEETING DATE: April 18, 2022

FROM: Iris Mata, Secretary

DEPARTMENT: Development Services

DIRECTOR: Roland Gomez

Agenda Item: Melden & Hunt, Inc., representing Blu-Man Investments, LLC., has filed with the Planning and Zoning Commission a request for a Change of Zone from Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I). The property is legally described as being 46.20-acres, more or less, out of Lots 383 and 384, Kelly-Pharr Subdivision, Pharr, Hidalgo County, Texas. The property is physically located within the 900 and 1000 Block of East Hi-Line Road. **COZ#220318**

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue: Melden & Hunt, Inc., representing Blu-Man Investments, LLC., has filed with the Planning and Zoning Commission a request for a Change of Zone from Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I). **COZ#220318**

Fiscal Consideration: N/A

Staff Recommendation: Development Services is recommending approval of the request to re-zone from Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I) as the property meets area requirements, is in line with the future land use and has adequate ingress and egress. If approved, the owner must comply with all City Ordinances and City Department requirements.

The Planning and Zoning Commission voted unanimously to approve the request for a change of zone from Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I) subject to staff's recommendations.

Alternatives: N/A

Exclude Material from Public Packet? No

Reason: N/A

ROUTING:

Iris Mata
Patricia Rigney
Roland Gomez
City Management Office

Created/Initiated - 4/12/2022
Approved - 4/12/2022
Approved - 4/13/2022
Final Approval - 4/14/2022



Pharr

Development Services



STANDARDIZED RECOMMENDATION FORM

MEETING DATE: April 18, 2022

ROUTE TO BOARD:

☒ CITY COMMISSION

AGENDA ITEM: COZ:#220318

☐ PLANNING & ZONING COMMISSION

DATE SUBMITTED: March 4, 2022

1. **Applicant:** Melden & Hunt, Inc., representing Blu-Man Investments, LLC., owner.
2. **Requested Action:** Re-zoning request from Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I).
3. **Nature / Intent of Request:** In order to develop and construct loading facilities.

4. **Routing to Staff:**

A. Roland Gomez, Interim Director


Initials

4-12-22
Date

☒ Approval ☐ Denial

B. Planning Staff Recommendations


Initials

4-12-22
Date

☒ Approval ☐ Denial

C. Planning and Zoning Commission

Initials

04/11/2022
Date

☒ Approval ☐ Denial

D. City Attorney

Initials

Date

☐ Approval ☐ Denial

E. City Manager

Initials

Date

☐ Approval ☐ Denial



MEMORANDUM

DATE: MONDAY, APRIL 18, 2022
TO: MAYOR AND CITY COMMISSION
FROM: DEVELOPMENT SERVICES
THROUGH: EDWARD WYLIE, INTERIM CITY MANAGER

SUBJECT: Re-zoning Request: From Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I). The property is legally described as being 46.20-acres, more or less, out of Lots 383 and 384, Kelly-Pharr Subdivision, Pharr, Hidalgo County, Texas. The property is physically located within the 900 and 1000 Block of East Hi-Line Road.

Comprehensive zoning and rezoning regulations and ordinances should be adopted and designed to facilitate, as much as possible, the following items:

1. To lessen congestion;
2. Secure safety from fire, panic and other dangers;
3. To promote health and general welfare;
4. To provide adequate light and air;
5. To protect the overcrowding of land and abutting traffic ways;
6. Avoid undue concentration of population, and;
7. To facilitate the adequate provisions of transportation, water, sewage, schools, parks, and other public requirements as per Local Government Code, Sect. 211.004.

DESCRIPTION OF PROPERTY:

Melden & Hunt, Inc., representing Blu-Man Investments, LLC., owner has filed with the Planning and Zoning Commission a request for a Change of Zone from Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I) in order to develop and construct loading facilities on subject property.

The subject site is located on the south side of East Hi-Line Road and is physically located within the 900-1000 Block of East Hi-Line Road. The property is legally described as being 46.20 acres, more or less, out of Lots 383 and 384, Kelly Pharr Subdivision, Pharr, Hidalgo County, Texas.

The property fronts East Hi-Line Road, an 80' major collector that runs east and west with a posted speed limit of 30 miles per hour or less as identified in the City of Pharr's Thoroughfare Plan.

The property is currently zoned Agricultural and/or Open Space District (A-O). The properties to the south were rezoned from Agricultural and/or Open Space District (A-O) to Limited Industrial District (L-I) on November 15, 2005. A portion of the properties to the east were rezoned from Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I) on February 15, 2000, and the upper east portion was rezoned to Limited Industrial District (L-I) on December 16, 2014. The properties to the north were rezoned from Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I) on February 7, 2019. The property to the east was rezoned from Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I) on April 4, 2022. There have no other zoning requests with the subject vicinity since that time. The property is generally designated for industrial use in the Land Use Plan.

The Heavy Industrial District (H-I) is established to provide adequate space and site diversification. The area requirements in this district are minimal and will allow both large and small industrial uses either on separate small lots or as part of a park. Some screening is required, but because of the potential for hazardous or possibly blighting uses, this district should not be located close to residential areas of any type. Areas should not be zoned to this usage unless they are located on or close to arterials capable of carrying commercial and truck traffic

Fourteen (14) letters were mailed out to the surrounding property owners and a legal notice was published in the Advance News Journal. Staff received no response to the letters or the legal notice.

Development Services is recommending **approval** of the request to re-zone from Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I) as the property meets area requirements, is in line with the future land use and has adequate ingress and egress. If approved, the owner must comply with all City Ordinances and City Department requirements.

The Planning and Zoning Commission voted unanimously to approve the request for a change of zone from Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I) subject to staff's recommendations.

CITY COMMISSION OPTIONS:

1. **Approve the rezoning request;**
2. **Table the item for:**
 - a) **consideration by the full board;**
 - b) **additional information;**
 - c) **additional time for applicant and adjacent property owners to meet;**
3. **Disapprove the request.**



Pharr

Development Services



REQUEST FOR CHANGE OF ZONE & AMENDMENT TO LAND USE PLAN

Melden and Hunt, Inc., representing Blu-Man Investments, LLC.,
owner

APPLICANT

Agricultural and/or Open Space District
(A-O)

CURRENT ZONE

900-1000 Block of East Hi-Line Road

ADDRESS

Heavy Industrial District (H-I)

PROPOSED ZONE

	YES	NO
1 Does the property meet the minimum area requirements for the proposed zone?	X	
2 Does the property have adequate ingress and egress?	X	
3 Will the change of zone be compatible with surrounding properties? (Zoning and Land Use)	X	
4 Is the property located along a major thoroughfare?	X	
5 Will the property have adequate parking for the proposed use?	X	
6 Will the property have adequate landscaping as per City Ordinance?	X	
7 Will the zone change increase the volume of traffic?	X	
8 Will a buffer be required?		X
9 Is the proposed change in line with the Future Land Use Plan?	X	

STAFF RECOMMENDATIONS:

Approval

Development Services is recommending approval of the request to re-zone from Agricultural and/or Open Space District (A-O) to Heavy Industrial District (H-I) as the property meets area requirements, is in line with the future land use and has adequate ingress and egress. If approved, the owner must comply with all City Ordinances and City Department requirements.

Anaisa Licerio
PREPARED BY

April 6, 2022
DATE

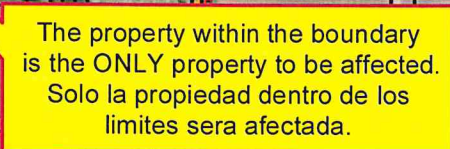


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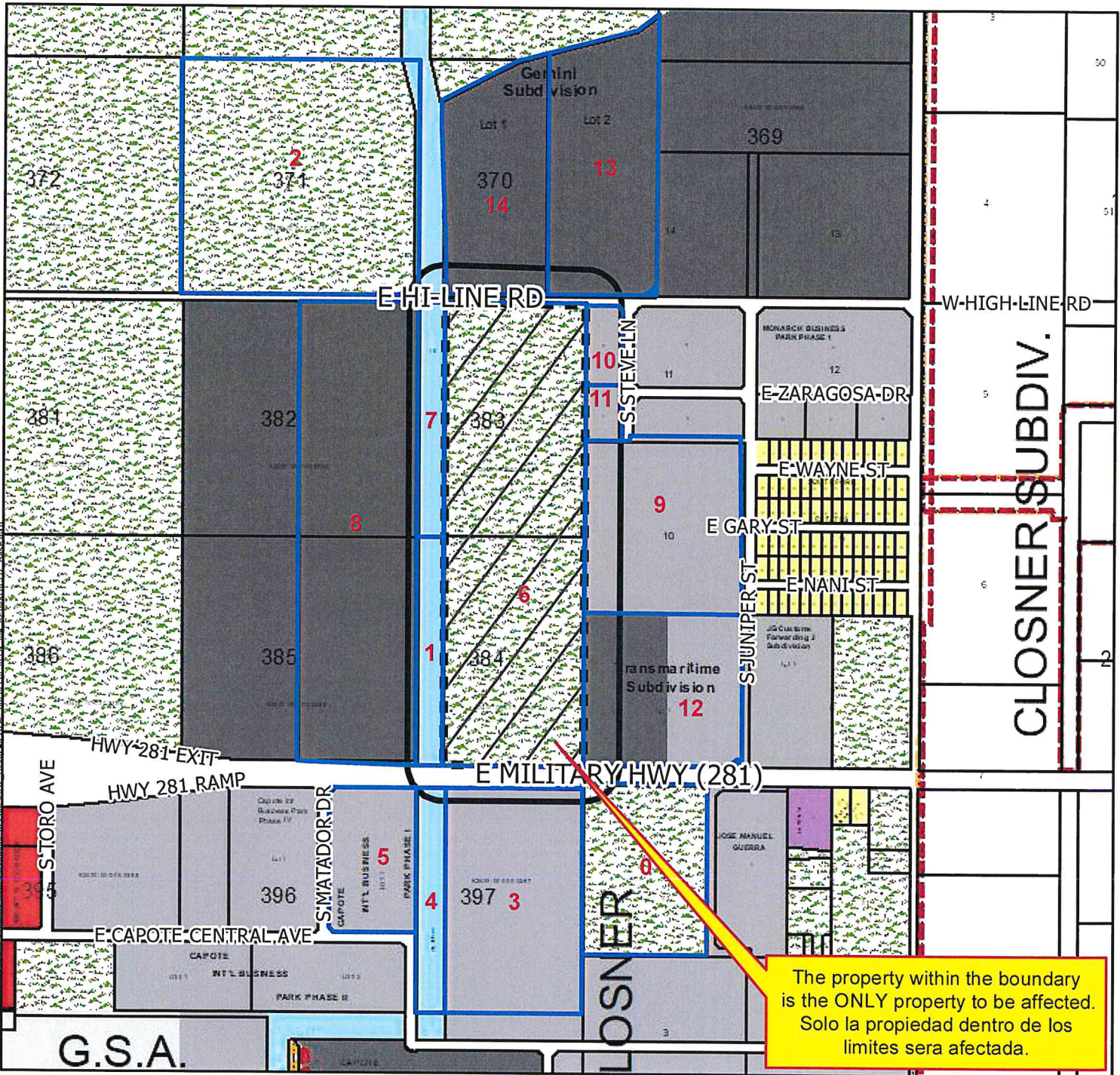
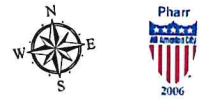
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SHEET 1 OF 1



A horizontal scale bar with markings at 0, 400, 800, 1,600, 2,400, and 3,200 feet.

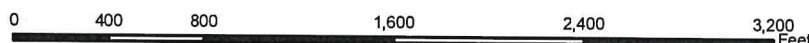
Proposed Change of Zone
Being 46.20 ac, out of Lot 383 & 384, Kelly Pharr
Melden & Hunt/Rep. Blu-Man Investments



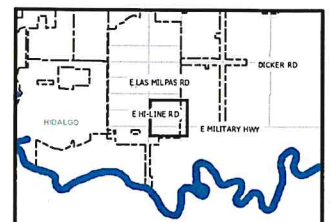
Zoning	Townhouse	Heavy Industrial
ZONE	HUD Code	Limited Industrial
Agricultural Open Space	Rail Road R.O.W	Neighborhood Commercial
Single Family	Government Owned	Office Professional
Single Family Small Lot	General Business	PSJA ISD
Residential Multi-Family	Business District	Hidalgo ISD
Residential Multi-Family High Density	Drainage Easement	Valley View ISD
Mobile Home	Heavy Commercial	Planned Unit Development

City of Pharr, Texas
Engineering Department
956.402.4242

Scale: 1 inch = 800 feet



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AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 6.E.3.

DATE SUBMITTED: April 12, 2022

MEETING DATE: April 18, 2022

FROM: Iris Mata, Secretary

DEPARTMENT: Development Services

DIRECTOR: Roland Gomez

Agenda Item: Melden & Hunt, Inc., representing Jaime and Sandra G. Galpern, owners, has filed with the Planning and Zoning Commission a request for a Change of Zone from Agricultural and/ or Open Space District (A-O) to General Business District (C). The property is legally described as being 0.120-acre, more or less, out of Lot 8, Block 12, A.J. McColl Subdivision, Pharr, Hidalgo County, Texas. The property is physically located within the 7600 Block of South Jackson Road.
COZ#220319

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue: Melden & Hunt, Inc., representing Jaime and Sandra G. Galpern, owners, has filed with the Planning and Zoning Commission a request for a Change of Zone from Agricultural and/ or Open Space District (A-O) to General Business District (C). **COZ#220319**

Fiscal Consideration: N/A

Staff Recommendation: Development Services is recommending approval of the request to re-zone from Agricultural and/ or Open Space District (A-O) to General Business District (C) as the property meets area requirements, has adequate ingress and egress. If approved, the owner must comply with all City Ordinances and City Department requirements.

The Planning and Zoning Commission voted unanimously to approve the request for a change of zone from Agricultural and/ or Open Space District (A-O) to General Business District (C) subject to staff's recommendations.

Alternatives: N/A

Exclude Material from Public Packet? No

Reason: N/A

ROUTING:

Iris Mata
Patricia Rigney
Roland Gomez

Created/Initiated - 4/12/2022
Approved - 4/12/2022
Approved - 4/13/2022

City Management Office

Final Approval - 4/14/2022



STANDARDIZED RECOMMENDATION FORM

MEETING DATE: April 18, 2022

ROUTE TO BOARD:

☒ CITY COMMISSION

AGENDA ITEM: COZ:#220319

☐ PLANNING & ZONING COMMISSION

DATE SUBMITTED: March 11, 2022

1. **Applicant:** Melden & Hunt, Inc., representing Jaime and Sandra G. Galpern, owners.
2. **Requested Action:** Re-zoning request from Agricultural and/ or Open Space District (A-O) to General Business District (C).
3. **Nature / Intent of Request:** In order to develop and construct a car wash.

4. **Routing to Staff:**

A. Roland Gomez, Interim Director

[Signature]
Initials

4-12-22
Date

☒ Approval ☐ Denial

B. Planning Staff Recommendations

[Signature]
Initials

4-12-22
Date

☒ Approval ☐ Denial

C. Planning and Zoning Commission

Initials

04/11/2022
Date

☒ Approval ☐ Denial

D. City Attorney

Initials

Date

☐ Approval ☐ Denial

E. City Manager

Initials

Date

☐ Approval ☐ Denial



Pharr

Development Services



MEMORANDUM

DATE: MONDAY, APRIL 18, 2022

TO: MAYOR AND CITY COMMISSION

FROM: DEVELOPMENT SERVICES

THROUGH: EDWARD WYLIE, INTERIM CITY MANAGER

SUBJECT: Re-zoning Request: From Agricultural and/ or Open Space District (A-O) to General Business District (C). The property is legally described as being 0.120-acre, more or less, out of Lot 8, Block 12, A.J. McColl Subdivision, Pharr, Hidalgo County, Texas. The property is physically located within the 7600 Block of South Jackson Road.

Comprehensive zoning and rezoning regulations and ordinances should be adopted and designed to facilitate, as much as possible, the following items:

1. To lessen congestion;
2. Secure safety from fire, panic and other dangers;
3. To promote health and general welfare;
4. To provide adequate light and air;
5. To protect the overcrowding of land and abutting traffic ways;
6. Avoid undue concentration of population, and;
7. To facilitate the adequate provisions of transportation, water, sewage, schools, parks, and other public requirements as per Local Government Code, Sect. 211.004.

DESCRIPTION OF PROPERTY:

Melden & Hunt, Inc., representing Jaime and Sandra G. Galpern, owners, has filed with the Planning and Zoning Commission a request for a Change of Zone from Agricultural and/ or Open Space District (A-O) to General Business District (C) in order to develop and construct a car wash.

The subject site is located on the east side of South Jackson Road and is physically located within the 7600 Block of South Jackson Road. The property is legally described as being a 0.120-acre, more or less, out of Lot 8, Block 12, A.J. McColl Subdivision, Pharr, Hidalgo County, Texas.

The property fronts south Jackson Road, a 120' to 150' principle arterial with a posted speed limit of 40 to 55 miles per hour as identified in the City of Pharr's Thoroughfare Plan.

The property and the property to the north, east, and south are currently zoned Agricultural and/or Open Space District (A-O). The property to the west is currently zoned General Business District (C). There have been no other zoning requests within the vicinity of the subject property since that time. The property is generally designated for residential use in the Land Use Plan.

The General Business District is established to provide adequate space and site diversification for most types of commercial development in the City of Pharr. Larger shopping centers and most existing commercial strips along major arterials would be included in this district. The noise, traffic, litter, late-night hours, and possible blighting influences require adequate buffering from residential areas, and the traffic from such uses should not pass-through residential areas, except on arterials or major collectors.

Zero (0) letters were mailed out due to no surrounding property owners within the 200-foot radius and a legal notice was published in the Advance News Journal.

Development Services is recommending **approval** of the request to re-zone from Agricultural and/ or Open Space District (A-O) to General Business District (C) as the property meets area requirements, has adequate ingress and egress. If approved, the owner must comply with all City Ordinances and City Department requirements.

The Planning and Zoning Commission voted unanimously to approve the request for a change of zone from Agricultural and/ or Open Space District (A-O) to General Business District (C) subject to staff's recommendations.

CITY COMMISSION OPTIONS:

- 1. Approve the rezoning request;**
- 2. Table the item for:**
 - a) consideration by the full board;**
 - b) additional information;**
 - c) additional time for applicant and adjacent property owners to meet;**
- 3. Disapprove the request.**



Pharr

Development Services



REQUEST FOR CHANGE OF ZONE & AMENDMENT TO LAND USE PLAN

Melden & Hunt, Inc., representing Jaime and Sandra G. Galpern,
owners.

Agricultural and/ or Open Space District
(A-O)

APPLICANT

CURRENT ZONE

7600 Block of South Jackson Road

General Business District (C)

ADDRESS

	YES	NO
1 Does the property meet the minimum area requirements for the proposed zone?	X	
2 Does the property have adequate ingress and egress?	X	
3 Will the change of zone be compatible with surrounding properties? (Zoning and Land Use)	X	
4 Is the property located along a major thoroughfare?	X	
5 Will the property have adequate parking for the proposed use?	X	
6 Will the property have adequate landscaping as per City Ordinance?	X	
7 Will the zone change increase the volume of traffic?	X	
8 Will a buffer be required?		X
9 Is the proposed change in line with the Future Land Use Plan?		X

STAFF RECOMMENDATIONS:

Approval

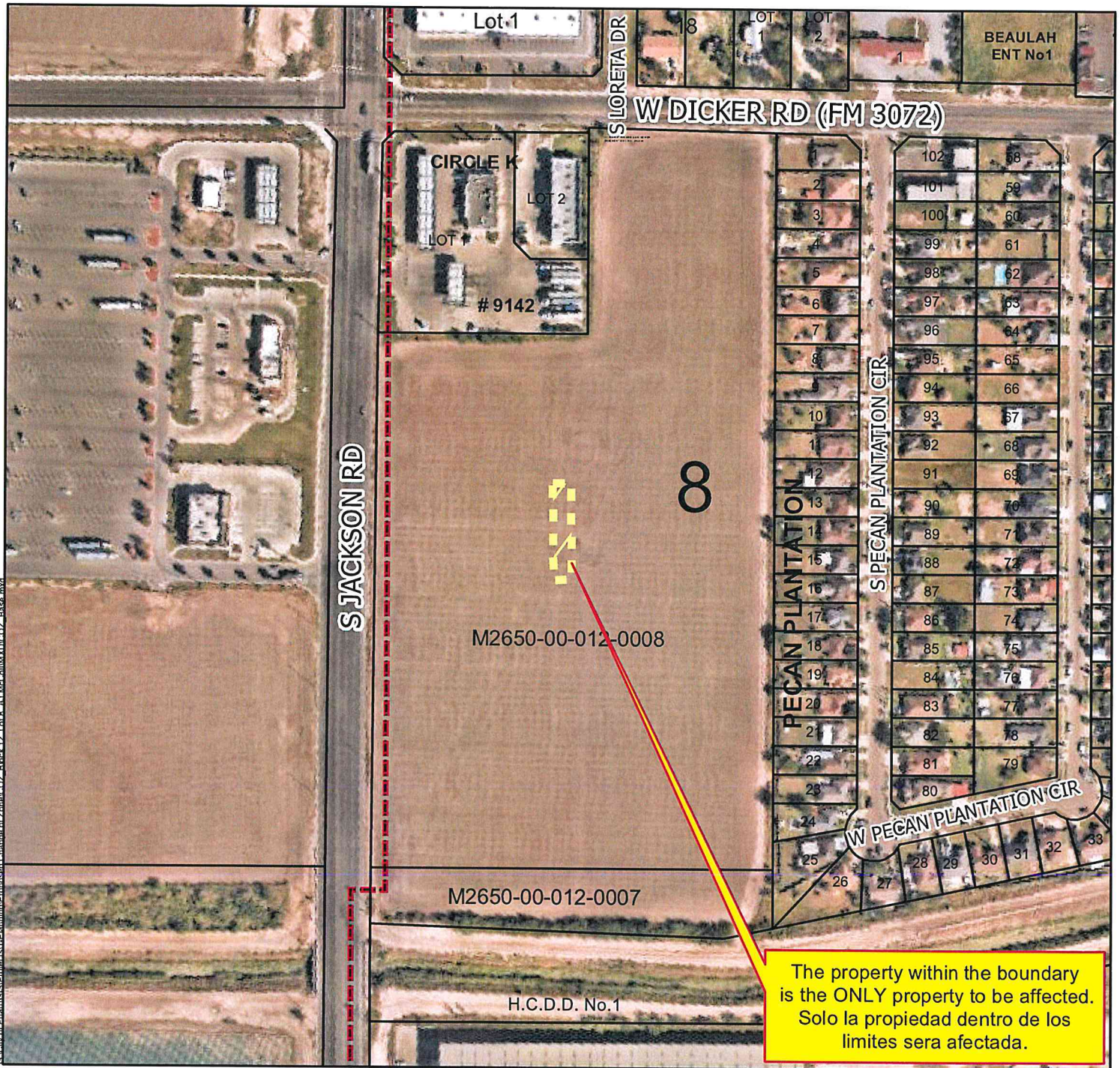
Development Services is recommending approval of the request to re-zone from Agricultural and/ or Open Space District (A-O) to General Business District (C) as the property meets area requirements, has adequate ingress. If approved, the owner must comply with all City Ordinances and City Department requirements.

Nelly Terrazas Rojo

PREPARED BY

April 6, 2022

DATE



Zoning

ZONE

- Agricultural Open Space
- Single Family
- Single Family Small Lot
- Residential Multi-Family
- Residential Multi-Family High Density
- Mobile Home

- Townhouse
- HUD Code
- Rail Road R.O.W
- Government Owned
- General Business
- Business District
- Drainage Easement
- Heavy Commercial
- Heavy Industrial
- Limited Industrial
- Neighborhood Commercial
- Office Professional
- PSJA ISD
- Hidalgo ISD
- Valley View ISD
- Planned Unit Development

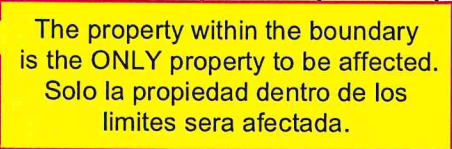
City of Pharr, Texas
Engineering Department
956.402.4242

Scale: 1 inch = 250 feet

0 125 250 500 750 1,000 Feet

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AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 7.A.

DATE SUBMITTED: April 11, 2022

MEETING DATE: April 18, 2022

FROM: Elva Guajardo, Administrative Assistant

DEPARTMENT: Parks

DIRECTOR: Sergio Alanis

Agenda Item: Consideration and action, if any, on Ordinance amending Ordinance O-2018-04 to modify the fee schedule to add the Pharr Natatorium located at 3001 N. Cage. *(1st Reading)*

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue: Due to the addition of the newly constructed Pharr Natatorium located at 3001 N. Cage, the Parks and Recreation Department wishes to amend the current fee schedule.

Fiscal Consideration: N/A

Staff Recommendation: Staff recommends City Council approve this item.

Alternatives: N/A

Exclude Material from Public Packet? No

Reason: N/A

ROUTING:

Elva Guajardo
Sergio Alanis
Annie Reeves
Patricia Rigney
City Management Office

Created/Initiated - 4/11/2022
Approved - 4/11/2022
Approved - 4/11/2022
Approved - 4/11/2022
Final Approval - 4/14/2022

ORDINANCE NO. O-2022-

AN ORDINANCE AMENDING ORDINANCE NOS. O-2014-17, O-2013-25, AND O-2018-04 ADOPTING THE PARKS AND RECREATION DEPARTMENT'S AQUATIC CENTER AND NATATORIUM FEE SCHEDULE; PROVIDING FOR REPEALING OF CONFLICTING ORDINANCE CLAUSE(S); AND PROVIDING FOR AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PHARR, TEXAS, THAT:

SECTION 1: The following Sections of Ordinance No. O-2014-17 of the City of Pharr be amended so that the same shall hereafter read as follows:

I. AQUATIC PARK (1000 S. Fir)

Saturdays and Sundays

- | | | |
|----|---|---------|
| a. | 0 to 2 Years of Age Must be Accompanied by an Adult | No fee |
| b. | 3 to 12 Years of Age | \$ 5.00 |
| c. | 13 through 54 Years of Age | \$10.00 |
| d. | 55 Years of Age and Older | \$ 5.00 |

Monday through Friday (Closed on Wednesdays)

- | | | |
|----|---|---------|
| a. | 0 to 2 Years of Age Must be Accompanied by an Adult | No fee |
| b. | 3 to 12 Years of Age | \$ 3.00 |
| c. | 13 through 54 Years of Age | \$ 5.00 |
| d. | 55 Years of Age and Older | \$ 3.00 |

II. AQUATIC PARK NATATORIUM (1000 S. Fir)

Monday through Friday (Closed on Wednesdays)

- | | | |
|----|----------------------------|---------|
| a. | 3 to 12 Years of Age | \$ 1.00 |
| b. | 13 through 54 Years of Age | \$ 2.00 |
| c. | 55 Years of Age and Older | \$ 1.00 |

III. AQUATIC PARK AQUA AEROBICS (1000 S. Fir)

- | | | |
|----|---------------------------|----------|
| a. | 16 Years of Age and Older | \$ 20.00 |
|----|---------------------------|----------|

IV. PHARR NATATORIUM (3001 N. CAGE)

- | | |
|---|----------|
| a. Residents, Veterans, and 55 Years of Age and Older | \$ 30.00 |
| b. Non-Residents | \$ 40.00 |

V. SWIM CLUB

- | | |
|----------------------------------|---------------------|
| a. All Ages (monthly) | \$ 20.00 |
|----------------------------------|---------------------|

SECTION 2: REPEALING CLAUSE

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 3: SEVERABILITY CLAUSE

The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part thereof.

SECTION 4: EFFECTIVE DATE; PUBLICATION.

The Ordinance shall take effect and be in force from and after its passage and approval on three (3) separate readings in accordance with Section 8, Article 3 of the Charter of the City of Pharr, Texas. Publication, if necessary, may also be in caption form as allowed under Section 9 of the Pharr City Charter.

SECTION 5: PROPER NOTICE AND MEETING.

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED ON THE FIRST READING BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF PHARR, TEXAS, on this the ____ day of _____ 2022.

CITY OF PHARR

AMBROSIO HERNANDEZ
MAYOR

ATTEST:

HILDA PEDRAZA, CITY CLERK

PASSED AND APPROVED ON THE SECOND READING BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF PHARR, TEXAS, on this the ____ day of _____, 2022.

CITY OF PHARR

AMBROSIO HERNANDEZ
MAYOR

ATTEST:

HILDA PEDRAZA, CITY CLERK

PASSED AND APPROVED ON THE THIRD AND FINAL READING BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF PHARR, TEXAS, on this the ____ day of _____, 2022.

CITY OF PHARR

AMBROSIO HERNANDEZ
MAYOR

ATTEST:

HILDA PEDRAZA, CITY CLERK



AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 7.B.

DATE SUBMITTED: April 12, 2022

MEETING DATE: April 18, 2022

FROM: Hilda Pedraza, City Clerk

DEPARTMENT: Administration

DIRECTOR: Edward Wylie

Agenda Item: Consideration and action, if any, on Resolution concerning AEP Texas Distribution Cost Recover Factors (DCRF) application and authorizing legal counsel to intervene and participate in the proceeding.

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue: On April 6, 2022, AEP Texas Inc. (“AEP” or “Company”) filed an Application to Amend its Distribution Cost Recovery Factor (“DCRF”) to increase distribution rates within each of the cities in their service area. In the filing, the Company asserts that it is seeking an increase in distribution revenues of approximately \$27.56 million (an approximately \$1.28 increase to the average residential customer’s bill from the rates approved in the Company’s most recent DCRF case).

The resolution authorizes the City to join with the Cities Served by AEP (“Cities”) to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

The resolution further authorizes the hiring of Lloyd Gosselink and consultants to review the filing, negotiate with the Company, and make recommendations to the City regarding reasonable rates. Additionally, it authorizes Cities to direct any necessary administrative proceedings or court litigation associated with an appeal of this application filed with the PUC.

The purpose of the Resolution is to deny the DCRF application proposed by AEP.

Fiscal Consideration: N/A

Staff Recommendation: Staff recommends approval.

Alternatives: N/A

Exclude Material from Public Packet? No

Reason: N/A

ROUTING:

Hilda Pedraza

Patricia Rigney

Annie Reeves

Karla Saavedra

City Management Office

Created/Initiated - 4/12/2022

Approved - 4/12/2022

Approved - 4/13/2022

Approved - 4/13/2022

Final Approval - 4/14/2022

MODEL STAFF REPORT REGARDING AEP TEXAS'S DISTRIBUTION COST RECOVERY FACTOR FILING

On April 6, 2022, AEP Texas Inc. (“AEP” or “Company”) filed an Application to Amend its Distribution Cost Recovery Factor (“DCRF”) to increase distribution rates within each of the cities in their service area. In the filing, the Company asserts that it is seeking an increase in distribution revenues of approximately \$27.56 million (an approximately \$1.28 increase to the average residential customer’s bill from the rates approved in the Company’s most recent DCRF case).

The resolution authorizes the City to join with the Cities Served by AEP (“Cities”) to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

Purpose of the Resolution:

The purpose of the Resolution is to deny the DCRF application proposed by AEP.

Explanation of “Be It Resolved” Paragraphs:

1. This section authorizes the City to participate with Cities as a party in the Company’s DCRF filing, PUC Docket No. 53451.
2. This section authorizes the hiring of Lloyd Gosselink and consultants to review the filing, negotiate with the Company, and make recommendations to the City regarding reasonable rates. Additionally, it authorizes Cities to direct any necessary administrative proceedings or court litigation associated with an appeal of this application filed with the PUC.
3. This paragraph finds that the Company’s application is unreasonable and should be denied.
4. This section states that the Company’s current rates shall not be changed.
5. The Company will reimburse Cities for their reasonable rate case expenses. Legal counsel and consultants approved by Cities will submit monthly invoices that will be forwarded to AEP for reimbursement.
6. This section recites that the Resolution was passed at a meeting that was open to the public and that the consideration of the Resolution was properly noticed.
7. This section provides that AEP and counsel for Cities will be notified of the City’s action by sending a copy of the approved and signed Resolution to counsel.

RESOLUTION NO. R-2022-_____

A RESOLUTION OF THE CITY OF PHARR, TEXAS FINDING THAT AEP TEXAS INC.'S APPLICATION TO AMEND ITS DISTRIBUTION COST RECOVERY FACTORS TO INCREASE DISTRIBUTION RATES WITHIN THE CITY SHOULD BE DENIED; AUTHORIZING PARTICIPATION WITH THE CITIES SERVED BY AEP TEXAS; AUTHORIZING HIRING OF LEGAL COUNSEL; FINDING THAT THE CITY'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

WHEREAS, the City of Pharr, Texas ("City") is an electric utility customer of AEP Texas Inc. ("AEP" or "Company"), and a regulatory authority with an interest in the rates and charges of AEP; and

WHEREAS, the City is a member of the Cities Served by AEP ("Cities"), a membership of similarly situated cities served by AEP that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in AEP's service area; and

WHEREAS, on or about April 6, 2022 AEP filed with the City an Application to Amend its Distribution Cost Recovery Factor ("DCRF"), PUC Docket No. 53451, seeking to increase electric distribution rates by approximately \$27.56 million (an approximately \$1.28 increase to the average residential customer's bill from the rates approved in the Company's most recent DCRF case); and

WHEREAS, all electric utility customers residing in the City will be impacted by this ratemaking proceeding if it is granted; and

WHEREAS, Cities are coordinating its review of AEP's DCRF filing with designated attorneys and consultants to resolve issues in the Company's application; and

WHEREAS, Cities members and attorneys recommend that members deny the DCRF.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PHARR, TEXAS, THAT:

Section 1. That the City is authorized to participate with Cities in PUC Docket No. 53451.

Section 2. That subject to the right to terminate employment at any time, the City hereby authorizes the hiring of the law firm of Lloyd Gosselink and consultants to negotiate with the Company, make recommendations to the City regarding reasonable rates, and to direct any necessary administrative proceedings or court litigation associated with an appeal of this application filed with the PUC.

Section 3. That the rates proposed by AEP to be recovered through its DCRF charged to customers located within the City limits, are hereby found to be unreasonable and shall be denied.

Section 4. That the Company shall continue to charge its existing rates to customers within the City.

Section 5. That the City's reasonable rate case expenses shall be reimbursed in full by AEP within 30 days of presentation of an invoice to AEP.

Section 6. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

Section 7. That a copy of this Resolution shall be sent to Leila Melhem, American Electric Power Service Corporation, 400 West 15th Street, Suite 1520, Austin, Texas 78701 and to Thomas Brocato, General Counsel to the Cities, at Lloyd Gosselink Rochelle & Townsend, 816 Congress Ave., Suite 1900, Austin, Texas 78701.

PASSED, APPROVED, AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PHARR this 18th day of April, 2022.

CITY OF PHARR

AMBROSIO HERNANDEZ, MAYOR

ATTEST:

HILDA PEDRAZA, CITY CLERK

APPROVED AS TO FORM:

City Attorney



AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 8.A.

DATE SUBMITTED: April 13, 2022

MEETING DATE: April 18, 2022

FROM: Melanie Cano, O.S.E. Director

DEPARTMENT: OSE

DIRECTOR: Melanie Cano

Agenda Item: Discussion with the Board of Commissioners on the City of Pharr's Strategic Plan 2022-2027.

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue: The City of Pharr partnered with TMAC to undertake the development of its first Strategic Plan. The Strategic Plan clearly articulates the priorities of the Pharr community and represents the first organization-wide strategic roadmap to municipal excellence, sustainability, and innovation. The Strategic Plan will guide the City's operations for the next five years, focus on strengthening its organizational culture, and improve city operations to better meet the needs of the community.

Fiscal Consideration: This item has been processed; UTRGV-TMAC.

Staff Recommendation: Staff recommends approval.

Alternatives: N/A

Exclude Material from Public Packet? No

Reason: This item will be discussed in executive session.

ROUTING:

Melanie Cano
Patricia Rigney
City Management Office

Created/Initiated - 4/13/2022
Approved - 4/13/2022
Final Approval - 4/14/2022



AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 9.A.

DATE SUBMITTED: April 12, 2022

MEETING DATE: April 18, 2022

FROM: Jose Pena, IT Director

DEPARTMENT: IT

DIRECTOR: Jose Pena

Agenda Item: Consideration and action, if any, authorizing City Manager to negotiate and enter into a contract with JSJ Rodriguez, Inc. DBA Tele-pro Communications from Mission, Texas for residential fiber installation labor services for TeamPharr.Net - Phase III South Pharr Build using a per-home unit cost through The Interlocal Purchasing System (TIPS) Purchasing Cooperative Contract number 200105.

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue: As part of the Fiber Project deployment, we are needing to bring a contractor onboard to begin Phase 3 South Pharr home fiber installation services.
(PROJECT# 2122-86-510-S009-001)

Fiscal Consideration: \$275 per home

Staff Recommendation: Staff recommends approval of JSJ Rodriguez, Inc. DBA Tele-pro Communications proposal.

Alternatives: Alternate vendor

Exclude Material from Public Packet? No

Reason: NA

ROUTING:

Jose Pena
Ignacio Amezcua
Patricia Rigney
Karla Saavedra
Anali Alanis
City Management Office

Created/Initiated - 4/12/2022
Approved - 4/13/2022
Approved - 4/13/2022
Approved - 4/13/2022
Approved - 4/14/2022
Final Approval - 4/14/2022

Project Name	Fiber Optic Network - Phase III Last Mile Comparison
Owner	City of Pharr
Date	April 12, 2022

Last Mile Labor Tabulation (Detailed)

	Telepro	STX			
Line Item			Unit		
Standard Home Install (up to 100ft)	\$ 275.00	\$ 280.00	EA		
Additional Services					
Direct bury > 100 LF	\$ 1.25	\$ 1.25	EA		
Driveway bore	\$ 75.00	\$ 110.00	EA		
Sidewalk bore	\$ 45.00	\$ 60.00	EA		
Under fence boring	\$ 100.00	\$ 100.00	EA		
Asphalt/Concrete Excavation	\$ 18.50	\$ 23.00	LF		
Non-Turf Trenching	\$ 6.50	\$ 6.50	LF		
Temporary Surface Drop	\$ 75.00	\$ 95.00	EA		
Concrete Core Drill	\$ 350.00	\$ 275.00	EA		
No Access / No Show Fee	\$ 30.00	\$ 30.00	EA		
Reschedule Appointment Fee	\$ 30.00	\$ -	EA		
Multi Box	\$ 52.00	\$ 80.00	EA		



AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 9.B.

DATE SUBMITTED: April 8, 2022

MEETING DATE: April 18, 2022

FROM: Jose Pena, IT Director

DEPARTMENT: IT

DIRECTOR: Jose Pena

Agenda Item: Consideration and action, if any, authorizing City Manager to negotiate and enter into a contract with STX Underground LLC from Brownsville, Texas for construction of the TeamPharr.Net Fiber Optic Network - Central Pharr Phase IV Project in the amount of \$12,169,621.35 through The Interlocal Purchasing System (TIPS) Purchasing Cooperative Contract number 200201-3132.

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue: The City is needing to bring a contractor onboard for the labor and construction of the distribution fiber for Phase 4 of TeamPharr.Net fiber project in Central Pharr.

Fiscal Consideration: \$12,169,621.35

Staff Recommendation: Staff recommends approval of STX labor agreement for Phase IV.

Alternatives: Alternate contractor.

Exclude Material from Public Packet? No

Reason: NA

ROUTING:

Jose Pena
Ignacio Amezcua
Patricia Rigney
Karla Saavedra
Anali Alanis
City Management Office

Created/Initiated - 4/8/2022
Approved - 4/8/2022
Approved - 4/11/2022
Approved - 4/13/2022
Approved - 4/13/2022
Final Approval - 4/14/2022



PROJECT NAME & NO.	City of Pharr Fiber Optic Network - Phase IV Labor		
JOB LOCATION	Mid Pharr		
PROPOSAL DATE	April 5, 2022	PROJECT START DATE	TBD
OWNER INFORMATION		CONTRACTOR INFORMATION	
OWNER NAME	City of Pharr	CONTRACTOR COMPANY NAME	STX Underground LLC
OWNER CONTACT NAME	Mr. Ed Wylie, City Manager	CONTRACTOR CONTACT NAME	Rolando Martinez
ADDRESS	118 S. Cage Blvd., Pharr, TX 78577	ADDRESS	144 Country Club Rd#2, Brownsville, TX 78520
OWNER PHONE	(956) 402-4231	CONTRACTOR PHONE	(956) 312-6530
OWNER EMAIL		CONTRACTOR EMAIL	stxundergroundllc@gmail.com
SCOPE OF WORK			
Installation of quantities detailed on "Construction / Labor Units" bidsheet attached.			
MATERIALS AND SERVICES NOT INCLUDED			
STX Underground proposes to provide all the labor, equipment, and services necessary for the installation of the materials specified in the "Construction / Labor Units" bid sheet attached. City of Pharr* *All Materials to be Provided by the			
AGREEMENT TERMS			
As per the City of Pharr's Contract Documents. TIPS Contract No.: 200201-3132 The proposed duration for Phase IV Labor is six (6) months. A detailed construction schedule will be developed with the City's input to determine priority of work packages.			
PROPOSAL MAY BE WITHDRAWN IF NOT ACCEPTED BY DATE OF			May 5, 2022
PROPOSAL TOTAL			
\$12,169,621.35 (Itemized breakdown provided in subsequent sheets.)			
ACCEPTANCE OF PROPOSAL			
Proposed costs, specifications, and conditions detailed above are accepted, and specified work is authorized to begin upon issuance of the notice to proceed. Payment for services rendered will be made as specified in the contract documents.			
STX UNDERGROUND LLC SIGNATURE		DATE	April 5, 2022

Construction/Labor Units					
UNIT CATEGORY	CLARIFICATION / DESCRIPTION	UNIT OF MEASURE	Estimated total	Unit Price	Total
UGB	Construction - Place NEW 1-1.25" HDPE	FT	280,842	\$ 12.50	\$ 3,510,525.00
UGB	Construction - Place NEW 1-1.25" HDPE	FT	80,375	\$ 12.50	\$ 1,004,687.50
UGB	Construction - Place NEW 3-1.25" HDPE	FT	7,228	\$ 13.00	\$ 93,964.00
UGB	Construction - Place NEW 1-2" HDPE	FT	40,889	\$ 12.50	\$ 511,112.50
UGB	Construction - Place NEW 2-2" HDPE	FT	157,601	\$ 13.00	\$ 2,048,813.00
UGB	Construction - Place NEW 3-2" HDPE	FT	0		\$ -
UGB	Construction - Place NEW 1-4" HDPE	FT	0		\$ -
UGB	Construction - Place NEW 2-4" HDPE	FT	0		\$ -
UGB	Construction - Install Coupler 1.25"-4"	EA	1,421	Included in Conduit Unit Price	
FIBER	Construction - Place 1 NEW / 24F - 576F Cable (Includes	FT	402,417	\$ 1.17	\$ 470,827.89
FIBER	Construction - Place 1 NEW / 24F - 864F Aerial Cable (Includes Slack)	FT	499	\$ 4.00	\$ 1,996.00
FIBER	Additional Cable Installation Adder	FT	0		\$ -
FIBER	Construction - Place MSTs (50' to 750') in conduit	EA	2,781	\$ 471.75	\$ 1,311,936.75
UGB	Construction - Place NEW 17"x30"x30" (Handhole)	EA	2,644	\$ 275.00	\$ 727,100.00
UGB	Construction - Place NEW 24"x36"x24" (Handhole)	EA	41	\$ 300.00	\$ 12,300.00
UGB	Construction - Place NEW 30"x48"x36" (Handhole)	EA	615	\$ 300.00	\$ 184,500.00
UGB	Placement of Fiber Distribution Hubs (FDH) Vault Mounted (incl. Splitter Install)	EA	32	\$ 800.00	\$ 25,600.00
UGB	Placement of Fiber Distribution Hubs (FDH) Sub Surface (incl. Splitter Install)	EA	0		\$ -
UGB	Construction - Place NEW Cable Marker	EA	30	Included in Conduit Unit Price	
UGB	Construction - Place Tracer Wire	FT	10,867	\$ 0.50	\$ 5,433.50
UGB	Construction - Place Flat Drop Kits	EA	945	\$ 35.00	\$ 33,075.00
SPL	Splicing - Prep Splice Closure	EA	423	\$ 250.00	\$ 105,750.00
SPL	Splicing- Fusion Splice-Ribbon	EA	100	\$ 28.00	\$ 2,800.00
SPL	Splicing - Fusion Splice-Loose Tube	EA	19,035	\$ 35.00	\$ 666,225.00
UGB	Construction - Place NEW Core Bore(s)	EA	0		\$ -
UGB	Construction - NEW Remove & Restore Sidewalk	SF	16	\$ 31.00	\$ 496.00
UGB	Construction - NEW Remove & Restore Asphalt	SF	0		\$ -
ISP	Drop Service (<200')	EA	0		\$ -
ISP	Drop Service Adder (100+ after 200')	EA	0		\$ -

ISP	Building Cable Entrance (Commerical) incl. Core Drill	EA	11	\$ 350.00	\$ 3,850.00
ISP	Place Hoffman Box	EA	7	\$ 100.00	\$ 700.00
ISP	Place EMT	LF	610	\$ 560.00	\$ 341,600.00
ISP	Place Plenum Innerduct	LF	0		\$ -
AER	Construction-Install Strand	FT	0		\$ -
AER	Construction-Install Anchor and Down Guy	EA	0		\$ -
AER	Construction-Install Fiber Snow Shoe	EA	0		\$ -
AER	Construction- Install pole mounting hardware and bonding	EA	0		\$ -
AER	Construction - Place/Attach NEW Aerial Riser(s)	EA	0		\$ -
				Sub-Total:	\$ 11,063,292.14
CON	Owner Contingency (10% of Sub-Total)	EA	1	\$ 1,106,329.21	\$ 1,106,329.21
			0	Total:	\$ 12,169,621.35

TeamPharr.net
Phase IV Preliminary
Labor Schedule

ID	 Task Mode	Task Name	Duration	Start	Finish	Predecessors	Resource Names	Dec '21	Jan '22	Feb '22	Mar '22	Apr '22	May '22	Jun '22	Jul '22	Aug '22	Sep '22	Oct '22	Nov
1		Bore & Pull Conduit	67 days	Mon 5/9/22	Tue 8/9/22														
2		Place Handholes	98 days	Mon 5/16/22	Wed 9/28/22	1SS+5 days													
3		Pull Fiber	60 days	Mon 7/11/22	Fri 9/30/22	4SS-20 days													
4		Fusion Splicing	62 days	Mon 8/8/22	Tue 11/1/22	2SS+60 days													

Project: STX Phase III Schedule
Date: Tue 4/5/22

Task		Project Summary		Manual Task		Start-only		Deadline	
Split		Inactive Task		Duration-only		Finish-only		Progress	
Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
Summary		Inactive Summary		Manual Summary		External Milestone			



Pharr



CITY OF PHARR PROJECT MANUAL CONTRACT DOCUMENTS

**FORMS OF CONTRACT, BONDS, PROPOSAL,
AND TECHNICAL SPECIFICATIONS, FOR**

**PROJECT NO. 2122-01-510-C007-001
FIBER OPTIC NETWORK PHASE IV-
LABOR**

Dr. Ambrosio “Amos” Hernandez

Mayor

Eleazar Guajardo

Commissioner

Roberto “Bobby” Carrillo

Commissioner

Ramiro Caballero

Commissioner

Daniel Chavez

Commissioner

Ricardo Medina

Commissioner

Itza Flores

Commissioner

**Edward M. Wylie, Interim City Manager
Maria Rangel, Assistant Director, Engineer
Ignacio Amezcua, Purchasing Director**

		DESIGN ENGINEER
ISSUED FOR PROPOSAL		
		ELECTRICAL DESIGN ENGINEER
ISSUED FOR PROPOSAL		

CITY OF PHARR
FIBER OPTIC NETWORK PHASE IV - LABOR

PROJECT No. 2122-01-510-C007-001

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DIVISION 0

PROCUREMENT AND CONTRACTING REQUIREMENTS

SECTION 00110
NOTICE TO PROPOSERS – NOT APPLICABLE

PART 1 - GENERAL

1.01 NOTICE TO PROPOSERS – NOT APPLICABLE

NOTICE TO PROPOSERS

Formal Sealed proposals addressed to Mr. Ed Wylie, Interim City Manager, City of Pharr, will be received “electronically” on July 14, 2021 at 3:00 p.m., at the Purchasing Department (2nd floor) of Pharr City Hall, at which time they will be taken to the City Commission Room and publicly opened and read aloud. All “electronic” proposal submittals must be uploaded on the City of Pharr’s bidding portal <https://pharr.procureware.com>. “Electronic” proposals must be in the City of Pharr’s possession on or before the aforementioned date and time (No late proposals will be accepted.) City of Pharr normal business working days are Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. and closed on Saturdays, Sundays and City recognized holidays. (Award typed Proposal Tabulation shall be posted on our bidding portal.)

CITY OF PHARR
FIBER OPTIC NETWORK PHASE IV - LABOR

A Proposer’s Bond from a reliable surety company licensed to operate in the State of Texas or certified Cashier’s Check, payable without recourse to the City of Pharr, for the amount of not less than five (5) percent (%) of the total proposal shall accompany the proposal as a guaranty that, if awarded the contract, the proposer will enter into a contract with the City of Pharr within the time specified. Payment and Performance Bonds shall be executed except in the event that the total amount proposal is \$50,000 or less, the successful contractor has the option to enter into a single payment contract with the City of Pharr in lieu of a Performance Bond. In the event that the total amount proposal is \$25,000 or less, the successful contractor has the option to enter into a single payment contract with the City of Pharr in lieu of a Payment and Performance Bond. Failure to execute contracts within the time specified shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security (proposal bond) deposited with his proposal.

Proposers receiving a “**NOTICE TO PROPOSERS**” and/or “**REQUEST FOR PROPOSALS**” notice via e-mail, fax, or reading same in the newspaper are advised that they shall be required to go online to our Bidding Portal: <https://pharr.procureware.com> to obtain solicitation documents (Plans, Specifications, Proposal Forms, and Contract Documents). Potential proposers are expected to inspect the site of work and to inform themselves regarding all local conditions, which may affect their proposal.

Proposals are to be submitted in both “[electronically](#)”. Any and all related Addendums issued shall be posted on our Bidding Portal.

Potential Proposers are asked to post their questions on our bidding portal under the tab labeled “Clarifications/Questions” under the relative project number.

The City of Pharr reserves the right to refuse and reject any or all proposals, to waive any or all formalities, or technicalities, and to accept the proposal to be the best and most advantageous to the City and hold the proposals for a period of **ninety (90) days** without taking action.

Conditional proposals will not be accepted. Proposals sent via facsimile shall not be accepted.

Electronic PROPOSALS: <https://pharr.procureware.com>

Proposals shall be sealed and clearly marked: **Project No. 2122-01-510-C007-001**

SECTION 00180
PROPOSER'S QUALIFICATIONS- NOT APPLICABLE

PART 1 - GENERAL

1.01 SECTION INCLUDES- NOT APPLICABLE

- A. This section contains the proposer's qualifications for the project.

1.02 DEFINITIONS - NOT APPLICABLE

- A. Refer to Section 0700

1.03 PROPOSER'S EXPERIENCE- NOT APPLICABLE

- A. Proposer shall have experience, human resources and access to the equipment necessary for performing the project work. In addition, it is required that a minimum of 60% of the project be completed by the proposers' own workforce.
- B. Proposer shall have performed substantially the same type of work as is required in the project in its prior work experience.
- C. The successful proposer shall appoint a "competent person" of the company to be full time supervisor or superintendent at the site. The competent person must be available at all times during the pendency of the project and must be available during "off-hours."

1.04 STATEMENT OF QUALIFICATIONS AND OWNER'S REVIEW- NOT APPLICABLE

Proposer shall submit their statement of qualifications following the format and page limits indicated below. The Owner shall have the right to take such steps or perform such investigations as it deems necessary to determine the ability of the proposer to perform the obligations under this Contract, and the proposer shall furnish any and all information or data requested for this purpose. The Owner reserves the right to reject any proposal if the evidence submitted by or investigation of such proposer fails to satisfy the owner that such proposer is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional proposals will not be accepted.

1.05 STATEMENT OF QUALIFICATIONS FORM. – NOT APPLICABLE

Date: _____, 202_.

Proposal of _____ (hereinafter called “Proposer”) a _____ (Corporation, Partnership, LLC, LLP, etc.) organized and existing under the laws of the State of Texas.

To the City of Pharr (hereinafter called “Owner”).

Gentlemen:

The Proposer is in compliance with the Proposer’s Qualifications Section(s) of the specifications for the **FIBER OPTIC NETWORK - CORE BUILD PROJECT**, having examined the plans and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project, hereby submits the following:

1.06 STATEMENT OF QUALIFICATIONS INSTRUCTIONS: – NOT APPLICABLE

Proposer shall submit their statement of qualifications following the format and page limits indicated below.

A. Qualifications, Project Experience & Key Personnel – 20 Pages

1. Firms History & Experience – Provide information on your firm to include but not limited to:
 - a. Size of firm
 - b. No. of employees
 - c. Principal Location
 - d. Branch Locations
 - e. Years in Business
 - f. Ownership Structure
 - g. Core Business Disciplines
 - h. Projects of Similar Type and Size

1) Provide a minimum of four similar projects completed within the last five years. Include project owner, project location, project scope, contract time, contract amount, change orders, lessons learned and contact information.

2. Organizational Chart and Key Personnel Resumes

- a. Include an organizational chart specific to this pursuit/project highlighting the key project personnel.
- b. Include key project personnel resumes indicating their role in the project, responsibilities or tasks, and proposed time allocation to this project.
- c. Names of Subcontractors: Provide names of subcontractors for this project with the following information: Name, Location and Experience. The subcontractors shall have a minimum of three (3) years of experience.

3. References

- a. Provide a minimum of three verifiable Owner references.

B. Ability to meet project schedule – 3 Pages

- 1. Provide a project schedule that includes major project milestones which demonstrate your firm's ability to meet or exceed your proposed project schedule. Include a narrative on your firm's methodology and previous project experience on meeting accelerated and/or condensed project schedules.

C. Financial Strength – 5 Pages (excluding Audited Financial Statement)

- 1. Bank Letter of Reference
- 2. Surety Company Letter of Bonding Capacity / Reference
- 3. Audited Financial Statements

D. Understanding of the project and familiarity with the project location – 3 Pages

- 1. Demonstrate your firms understanding of the project, project scope and familiarity with the project location. Identify any potential risks and how your firm plans to eliminate and/or mitigate those risks associated with the project.

PART 2 - P R O D U C T S - N O T U S E D

PART 3 - E X E C U T I O N - N O T U S E D

END OF SECTION

SECTION 00210
INSTRUCTIONS TO PROPOSERS- NOT APPLICABLE

PART 1 - GENERAL

1.01 SECTION INCLUDES- NOT APPLICABLE

- A. This section contains the instructions to proposers for the project.

1.02 DEFINITIONS - NOT APPLICABLE

- A. Refer to Section 0700

1.03 DOCUMENTS- NOT APPLICABLE

- A. Contract Documents, including Drawings and Technical Specifications are on file online, and at the City's Purchasing Department's Office located on the (2nd Floor) at 118 S. Cage Blvd., Pharr, TX 78577.
- B. Potential Proposers are asked to post their questions on our bidding portal (<https://pharr.procureware.com>) under the tab labeled "Clarifications/Questions" under the relative project number.
- C. Proposers, suppliers, or sub-contractors may obtain electronic copies of the Proposal Solicitation documents, Proposal Forms, and Contract Documents, at no cost, by visiting our bidding portal at <https://pharr.procureware.com>.
- D. Proposer should thoroughly examine and become familiar with the Proposal Solicitation/Contract Documents, including, but not limited to, the plans, specifications, and any issued addendum(s). By execution of the Contract, the Proposer (Contractor) shall be responsible for any and all obligations under the Contract and failure by Contractor to become acquainted with the Contract Documents will not relieve Contractor from such obligations.

1.04 ADDENDA AND INTERPRETATIONS: - NOT APPLICABLE

- A. No interpretations of the meaning of the plans, specifications, or other proposal solicitation documents will be made orally to any proposer. Every request for such interpretation should be posted on our bidding portal and must be received at least five (5) days prior to the date fixed for the opening of proposals to be given consideration. Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the specifications which, if issued, will be sent via facsimile, mailed by regular mail, e-mailed, and/or posted on our bidding portal at <https://pharr.procureware.com>. All prospective proposers are advised to visit our bidding portal for the most current information. All addenda shall be posted on our bidding portal not later than two (2) days prior to the date fixed for the opening of proposals. Failure of any proposer to receive any such addenda or interpretation shall not relieve such proposer from any obligation under his proposal as submitted. All addenda so issued shall become part of the contract documents.

1.05 NOTICES- NOT APPLICABLE

- A. The City of Pharr (Owner) reserves the right to accept or reject proposals submitted waive formalities in bidding; accept the proposal deemed most advantageous to the City of Pharr.
- B. Proposals may be held by the Owner for a period not to exceed **ninety (90) days** from the date of the proposal opening for the purpose of reviewing the proposals and investigating the proposer's qualifications prior to the contract award.
- C. The Owner is an Affirmative Action and Equal Opportunity Employer.
- D. Small and minority firms are encouraged to submit proposals for this project.

1.06 PREPARATION OF PROPOSAL AND USE OF SEPARATE PROPOSAL FORMS: - NOT APPLICABLE

- A. These Contract and Specifications includes a complete set of proposal forms which are for the convenience of the proposers. Proposal forms furnished in this document shall be copied by the proposer and should be filled in and submitted with all values completed in ink.
- B. The use of subcontractors is allowed; however, the proposer is specifically advised that any person, firm, or other party to whom it is proposed to award a subcontract under this contract must be acceptable to the owner.

1.07 MODIFICATION: – NOT APPLICABLE

A. Proposer shall not modify proposal by fax or other method at any time prior to the schedule closing time for receipt of proposals.

1.08 METHOD OF BIDDING (UNIT PRICES) WHERE APPLICABLE: – NOT APPLICABLE

A. The unit prices for each of the several items in the proposal of each proposer shall include its pro-rata share of overhead so that the sum of the products obtained by multiplying the quantity shown for each item by the unit price proposal represents the total proposal. Any proposal not conforming to the requirement may be rejected as informal. The special attention of all proposers is called to this provision, for should conditions make it necessary to revise the quantities, no limit will be fixed for such increases or decreases in quantities, nor extra compensation allowed, provided the net monetary value of all such additive and subtractive changes in quantities of such items of work (i.e., difference in cost) shall not increase or decrease the original contract price by more than twenty-five (25%) percent, except for work not covered in the drawings and technical specifications and the Standard General Conditions for Construction Contract of agreement.

1.09 BASIS OF PROPOSALS AND SELECTION CRITERIA- NOT APPLICABLE

A. The City of Pharr, City Commission has authorized the use of the Competitive Sealed proposals method of solicitation. The following criteria and scoring matrix is hereby incorporated: The City of Pharr reserves the right to apply all criteria as deemed appropriate and allowed in Texas Local Government Code 252 and 2269. Including but not limited to the below, and other relevant factors specifically denoted in the solicitation package. The City of Pharr specifically requests offerors to answer and provide information related to the following criteria. Questions left unanswered or omitted requested information may result in a partial or total reduction of allocated points.

1. 35 POINTS – QUALIFICATIONS, PROJECT EXPERIENCE & KEY PERSONNEL:

When evaluating a contractor's qualifications, the City uses the "Contractor's Statement of Qualifications" and corresponding references attached within and past experience of the contractor. The City may also interview key personnel at a time to be named after receipt of proposals. This criterion is **objectively** evaluated, and the formula is as follows: (Points = Score) with a maximum of thirty-five points allowable. Each evaluator assigns points based upon the responses the contractor provides in the "Contractor's Statement of Qualifications" And any past experience with the contractor. The "Contractor's Statement of Qualifications" is a minimum, and you may provide additional pertinent information relevant to the project for which you are submitting this proposal.

2. 30 POINTS – COST PROPOSAL (PRICE):

The quality of Offerors is not judged solely by a low initial cost proposal or, conversely, eliminated solely because of a high initial cost proposal. The following is the formula used when determining price as a factor for construction contract proposals. The lowest proposal price of all the proposals becomes the standard by which all price proposals are evaluated. One at a time, each proposal is evaluated by taking the lowest proposal price and dividing it by the price of the proposal being evaluated. That fraction is then multiplied by the maximum point value of the price factor for the price score. For Example: $(\text{Lowest Price} / \text{Current Proposal Price}) \times \text{Maximum Point Value} = \text{Price Score}$.

3. 15 POINTS – ABILITY TO MEET PROJECT SCHEDULE CONSTRUCTION TIME: This criterion is, as with price, objective and evaluators use the following formula when determining construction time as a factor for construction contract proposals. The lowest construction time proposal of all the proposals becomes the standard by which all the construction time proposals are evaluated. One at a time, each proposal is evaluated by taking the lowest construction time and dividing it by the construction time of the proposal being evaluated. That fraction is then multiplied by the maximum point value of the construction time factor for the construction time score. For example: $(\text{Lowest construction time} / \text{Current Proposal construction time}) \times \text{Maximum Point Value} = \text{Construction Time Score}$

4. 10 POINTS FINANCIAL STRENGTH

- a. On a separate sheet, attach your company's current financial statement, bank letter of reference and surety company letter of bonding capacity.
- b. Has your company ever filed bankruptcy?

- c. Are there any judgments, claims, mediation proceedings, arbitration proceedings or suits pending or outstanding against your organization or its officers? If yes, attach details.

5. 5 POINTS - UNDERSTANDING OF THE PROJECT AND FAMILIARITY WITH THE PROJECT LOCATION:

- 6. 5 POINTS -SAFETY INFORMATION FOR PRIME CONTRACTOR AND KEY SUBCONTRACTOR(S)** This criterion is also more subjectively evaluated, and the formula is as follows: (Points = Score) with a maximum of five points allowable. Each evaluator assigns points based upon the responses you provide in your "Safety Record Questionnaire" and the Contractors Experience Modification Rate (EMR). Contractors with an EMR greater than 1.0, as well as those Contractors not submitting EMRs, will receive zero points for this portion of the selection criteria. The City may consider any incidence involving worker safety or safety of Pharr residents, be it related or caused by environmental, mechanical, operational, supervision or any other cause or factor under the contractor's control. Evaluators base their rating primarily upon how well you document previous offenses with the date of the offense, location where the offense occurred, type of offense, final disposition of the offense, and any penalty assessed as well as the EMR.

- a. Provide records showing Total Recordable Incident Rate (TRIR) for each year for the past five (5) years for the Prime Contractor and Key Subcontractor(s).
- b. Provide records showing the company's Experience Modification Rate (EMR) for the past three years for the Prime Contractor and Key Subcontractor(s).
- c. List any fatalities in the company's safety history for the Prime Contractor and Key Subcontractor(s).

1.10 SELECTION- NOT APPLICABLE

- A. Selection shall be based on the responsible offeror whose proposal is determined to be the most advantageous to the City of Pharr considering the relative importance of evaluation factors included in this invitation to proposal.
- B. No individual of any city department (City of Pharr water utilities or other) has the authority to legally and/or financially commit the city to any contract, agreement or purchase order for goods or services, unless specifically sanctioned by the requirements of this request for proposal.

- C. The City shall select the offeror that offers the best value for the City based on the published selection criteria and on its ranking evaluation. The City shall first attempt to negotiate a contract with the selected offeror. The City and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the City is unable to negotiate a contract with the selected offeror, the City shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.
- D. In determining best value for the City, the City is not restricted to considering price alone, but may consider any other factor stated in the selection criteria.
- E. Proposers must include all allowances, deductive, add, and/or alternative proposal pricing as specified.
- F. If there is a discrepancy between prices quoted by written words or figures, the price quoted by words will govern.
- G. A proposal will be subject to being considered irregular and may be rejected if it shows omissions, alterations of form, conditional alternate proposals, additions or alternates in lieu of the items specified, if the unit prices are obviously unbalanced (either in excess of or below reasonably expected values), or irregularities of any kind."

1.11 PROPOSAL GUARANTEE: - NOT APPLICABLE

- A. Each proposer shall furnish a proposal guarantee equivalent to five percent of the proposal price (Water Code 17.183) by cash, certified cashier's check or a proposal bond. If a proposal bond is provided, the Contractor shall utilize a surety company which is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.
- B. Such cash, checks, or proposal bonds will be returned to all except the three lowest proposers within five (5) days after the opening of proposals, and the remaining cash, checks, or proposal bonds will be returned promptly after the Owner and the accepted proposer have executed the contract or if no award has been made, within ninety (90) days after the date of the opening of proposals, upon demand of the proposer at any time thereafter, so long as he has not been notified of the acceptance of his proposal.
- C. Liquidated damages for failure to enter into contract: The successful proposer, upon his failure or refusal to execute and deliver the contract and insurance certificates required within ten (10) days after he has received notice of the acceptance of his proposal, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with his proposal.

1.12 PROJECT BONDING

- A. On all contracts that will equal to or exceed \$100,000.00, the performance bond and the payment bond must be provided from a surety that is licensed in the State of Texas.
- B. In the event that the contract amount total(s) \$50,000 or less, the successful contractor has the option to enter into a single payment contract with the City of Pharr in lieu of a Performance Bond, provided that no money shall be paid to the contractor until completion of the work by the contractor and acceptance of same by the City of Pharr. In the event that the total amount proposal is \$25,000 or less, the successful contractor has the option to enter into a single payment contract with the City of Pharr in lieu of a Payment and Performance Bond(s).
- C. Required performance bond must be written in the amount of 100% of the Contract amount.
- D. Required payment bond must be written in the amount of 100% of the Contract amount.
- E. All project(s) stemming from this contract will require a warranty on maintenance and defects to begin at acceptance of the project(s) and for the duration of a minimum one (1) year unless otherwise noted for a longer term.

1.13 TIME OF COMPLETION AND LIQUIDATED DAMAGES:

- A. Proposer must agree to commence work within **ten (10)** days of the written "Notice to Proceed" from the Owner and to complete the project within calendar days thereafter.
- B. Proposer must agree also to pay as liquidated damages the sum of **One Thousand dollars and 00/100 (\$1,000)** per day for each consecutive calendar day thereafter as provided in the general conditions.

1.14 CONDITIONS OF WORK:

Each proposer must inform himself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful proposer of his obligation to furnish all material and labor necessary to carry out the provisions of his contract. Insofar as possible, the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of, or interference with, the work of any other Contractor.

1.15 INSPECTION OF SITE:

- A. Proposer should visit the site(s) of the proposed work and become fully acquainted with the existing conditions of the site and with the facilities involved, with a special consideration to the difficulties and restrictions attending the performance of the Contract.

1.16 PAYMENT REQUESTS

- A. Contractor shall be expected to invoice the City of Pharr, at the awarded unit price(s), on a per project basis for completed items. All invoices shall reflect appropriate Purchase Order Number(s) as designated by the Purchasing Department.
- 1. Contractor shall be expected to state on the request for payment (invoice) the Purchase Order Number, Project Number, Title of Project, the date(s) work was performed, the proper address where the work was performed, the type of work performed (line item descriptions), the quantity of work as per the unit of measure, the unit price, and the extended cost.

1.17 AUDIT

The City of Pharr reserves the right to audit the proposer's books and records relating to the performance of this contract. The City of Pharr, at its own expense, shall have the right at all reasonable times during normal business hours and upon at least twenty-four (24) hours' advance notice, to audit, to examine, and to make copies of or extracts from the books of account and records maintained by the vendor(s) with respect to the Supply/Service and/or Purchase Contract. If such audit shall disclose overpayment by City to vendor, written notice of such overpayment shall be provided to the vendor and the amount of overpayment shall be promptly reimbursed by vendor to the City. In the event any such overpayment is not paid within ten (10) business working days after receipt of such notice, the unpaid amount of such overpayment shall bear interest at the rate of one percent (1%) per month from the date of such notice until paid.

1.18 WORKING DAYS

Working Days - working days, except Saturdays, Sundays and City recognized holidays, if weather or other conditions permit the performance of the principal unit of work underway, as determined by the Engineer, for a continuous period of at least 7 hours between 7:00 a.m. and 6:00 p.m.

1.19 CHAPTER 2252.152 TEXAS GOVERNMENT CODE

TEXAS GOVERNMENT CODE CHAPTER 2252.152 CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED

- A. In accordance with Chapter 2252.152 of the Texas Government Code, Proposer is to acknowledge that Proposer does not engage in business with Iran, Sudan or any foreign terrorist organization and Proposer is not listed by the Texas Comptroller as a terrorist organization.

1.20 CHAPTER 2270 TEXAS GOVERNMENT CODE

TEXAS GOVERNMENT CODE CHAPTER 2270 PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

- B. "In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract.

Sample Wording: "Proposer hereby Acknowledges the Prohibition of Contracts with Foreign Terrorist Organizations and with the Boycotting of Israel. The signatory executing this contract on behalf of company hereby verifies that the company is not on the Texas Comptroller's list of terrorist organizations, is not engaged in business with Iran, Sudan or any foreign terrorist organization and will not boycott Israel throughout the term of this contract." (to be submitted on company letterhead with authorized signor(s) signature(s))

1.21 CHAPTER 2253 TEXAS GOVERNMENT CODE – RETAINAGE

All Contract pay applications shall bear a retainage of five (5) percent (%) on each partial disbursement.

1.22 CONDITIONS OF WORK

- C. Each proposer must inform himself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful proposer of his obligation to furnish all material and labor necessary to carry out the provisions of his contract. Insofar as possible, the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of, or interference with, the work of any other Contractor.

1.23 EXPERIENCE AND WORKFORCE

- D. Proposer shall have experience, human resources and access to the equipment necessary for performing the project work. In addition, it is required that a minimum of 60% of the project be completed by the proposers' own workforce.

1.24 HOUSE BILL (H.B.) 1295 – “DISCLOSURE OF INTERESTED PARTIES”

In 2015, the Texas Legislature adopted House Bill 1295 (H.B. 1295) has been revised. *Portions of the text of subsection as amended by Acts 2017, 85th R.S., Ch. 526 (SB 255).*

(Changes identified by italicized text apply only to a contract entered into or amended on or after January 1, 2018).

(a) In this section:

- (1) “Business entity” means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.
- (2) “Governmental entity” means a municipality, county, public school district, or special-purpose district or authority.
- (3) “Interested party” means a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity.
- (4) “State agency” means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education as defined by Section [61.003](#), Education Code.

(b) This section applies only to a contract of a governmental entity or state agency that:

- (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed; or
- (2) has a value of at least \$1 million.

(c) Notwithstanding Subsection (b), this section does not apply to:

- (1) a sponsored research contract of an institution of higher education;*
- (2) an interagency contract of a state agency or an institution of higher education;*
- (3) a contract related to health and human services if:*
 - (A) the value of the contract cannot be determined at the time the contract is executed; and*
 - (B) any qualified vendor is eligible for the contract;*
- (4) a contract with a publicly traded business entity, including a wholly owned subsidiary of the business entity;*
- (5) a contract with an electric utility, as that term is defined by Section 31.002, Utilities Code; or*

HOUSE BILL (H.B.) 1295 – “DISCLOSURE OF INTERESTED PARTIES” CONTINUED:

(6) a contract with a gas utility, as that term is defined by Section 121.001, Utilities Code.

(d) A governmental entity or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted under this section, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

(e) The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission that includes:

(1) a list of each interested party for the contract of which the contracting business entity is aware; and

(2) a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury that is in substantially the following form:

*“My name is _____, my
date of birth is _____, and my address is*

*_____, _____, _____, _____,
(Street) (City) (State) (Zip Code)*

*_____.
(Country)*

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day

of _____, _____.

(Month) (Year)

*_____
Declarant”.*

(f) Not later than the 30th day after the date the governmental entity or state agency receives a disclosure of interested parties required under this section, the governmental entity or state agency shall submit a copy of the disclosure to the Texas Ethics Commission.

(g) The Texas Ethics Commission shall adopt rules necessary to implement this section, prescribe the disclosure of interested parties form, and post a copy of the form on the commission's Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 1024 (H.B. 1295), Sec. 3, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 526 (SB 255, Sec. 5, eff. September 1, 2017).

<https://www.ethics.state.tx.us/tec/1295-Info.htm>

https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

As a business entity under this law, it is your firm's responsibility to comply with all disclosure laws including Chapter 2252. The City of Pharr as the governmental entity must ensure compliance of the same.

Note: You will be required to register and create an account. Once registered, you will receive an email containing a password setup link. Click on the link to set your password. After you have established an account, you will use your email address, password, and user type (Business Entity) to log in to the filing application to enter the required information on Form 1295. Print a copy of the completed form which includes a unique certification of filing number assigned by the application. An authorized agent of the business must sign the form and have the form notarized. The completed Form 1295 with an "unsworn declaration" certification with signature must be submitted at the time the signed contract is submitted to the City of Pharr. Failure to comply may result in contract revocation and award to the next compliant contractor/vendor.

END OF SECTION

SECTION 00300

PROPOSAL BID FORM- **NOT APPLICABLE**

FIBER OPTIC NETWORK PHASE IV - LABOR

PROJECT NO. 2122-01-510-C007-001

~~**PROPOSAL OPENING: JULY 14, 2021 AT 3:00 P.M.**~~

TO: OWNER (CITY OF PHARR)

The undersigned, as proposers, declares that the only person or parties interested in this proposal as principals are those named herein, that this proposal is made without collusion with any other person, firm or corporation; that he has carefully examined the form of contract, Notice to Contractors, specifications and the plans thereon referred to, and has carefully examined the plans, specification, locations, and conditions and classes of materials of the proposed work; and agrees that he will provide all the necessary labor, machinery, tools, and apparatus, and other items incidental to construction, and will do all the work and furnish all the materials called for in the contract and specifications in the manner prescribed therein and according to the requirements of the Engineer/Architect as therein set forth.

It is further agreed that the quantities of work to be done at unit prices and materials to be furnished may be increased or diminished as may be considered necessary, in the opinion of the Engineer, to complete the work fully as planned and contemplated, and that quantities of work, whether increased or decreased are to be performed at the unit prices set forth below or as provided in the Specifications.

It is further agreed that the lump sum prices may be increased to cover additional work ordered by the Engineer and approved by the OWNER, but not shown on the Plans or required by the Specifications, in accordance with the provisions of the General Conditions. Similarly, they may be decreased to cover deletion of work so ordered.

It is understood that the OWNER reserves the right to reject any and all proposals.

ELECTRONIC PROPOSAL FORM

Proposers are advised that a **formal "Electronic"** submittal **is required**. As previously instructed via Invitation, Notice to Proposers, Instructions to Proposers, and at the Pre-Proposal conference, Proposers must go online to the City's website to download any and all related project documents. Kindly submit your **Sealed Proposal** and accompanying documents on or before the Proposal Opening date & time. Kindly submit your **"Electronic "Proposal"** submittal through our bidding portal <http://pharr.procureware.com> uploading required documents on or before the Proposal Opening date & time

Accompanying this proposal is a certified or cashier's check or proposal bond payable to the City of Pharr.

PROPOSAL BID FORM

The proposal security accompanying this proposal shall be returned to the proposer, unless in case of the acceptance of the proposal, the proposer shall fail to execute a Contract and file a performance and payment bond within ten (10) days after its acceptance, in which case the proposal security shall become the property of City of Pharr and shall be considered as payment for damages due to delay and other inconveniences suffered by the OWNER on account of such failure of the proposer.

ENGINEER'S/ARCHITECT'S ESTIMATE OF QUANTITIES - APPROXIMATE ONLY

Proposer agrees to perform all work described in the specifications and shown on the plans, for the following price or prices:

TOTAL AMOUNT OF PROPOSAL (ITEMS 1-29): \$_____

TOTAL AMOUNT PROPOSAL (ITEMS 1-29 Words): _____

TO BE PROVIDED BY COBB FENDLEY

PROJECT CONSTRUCTION TIME

ITEM NO.	SECTION	DESCRIPTION	UNIT	DAYS
1	N/A	TOTAL AMOUNT OF CALENDAR DAYS PROPOSED BY CONTRACTOR	CALENDAR DAYS	

In the event of the award of a Contract to the undersigned, the undersigned will furnish a performance and payment bond for the full amount of the Contract, to secure proper compliance with the terms and provisions of the Contract, to insure and guarantee payment of all lawful claims for labor performed and materials furnished in the fulfillment of the Contract.

The proposed work to be done shall be accepted when fully completed and finished in accordance with the Plan and Specifications to the satisfaction of the Engineer.

The undersigned certifies that the proposal prices contained in this Proposal have been carefully checked and are submitted as correct and final.

The Proposer agrees that this proposal shall be good and may not be withdrawn for a period of ninety (90) days after the scheduled closing for receiving proposals.

Unit and lump sum prices must be shown in figures for each item listed in the Proposal form. Should proposal prices on any item be omitted, the right is reserved to apply the lowest prices submitted by and other proposers for the omitted items in payment for work done under this Proposal. In the event of discrepancies, the Owner reserves the right to accept or reject in formalities.

The undersigned agrees, unless hereinafter stated otherwise to furnish all materials as shown on the Specifications and Detail sheets.

Proposer hereby agrees to commence work under this contract within **ten (10) days** after notice to PROCEED is issued and complete the work within **calendar days**.

Receipt is hereby acknowledged of the following addenda to the Contract Document:

Addendum No. 1 Dated:_____ Received:_____

Addendum No. 2 Dated:_____ Received:_____

Addendum No. 3 Dated:_____ Received:_____

Addendum No. 4 Dated:_____ Received:_____

Proposer agrees that the Owner has the right to accept or reject any or all proposals and to waive any or all formalities.

Date:_____

Respectfully Submitted:

Authorized Signor

Type/Print Name (Authorized Signor)

Title

Legal Company Name

(Seal - If proposer is a Corporation)

Address

City, State, Zip

Business Phone

Cell Number

E-Mail Address

END OF SECTION

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SECTION 00310
PROPOSAL SUBMITTAL CHECKLIST- **NOT APPLICABLE**

PART 1 - GENERAL

1.01 PROPOSAL INFORMATION

- A. Proposer:
ntracB. Prime Co
- C. Project Name: FIBER OPTIC NETWORK PHASE IV - LABOR
- D. Project Location: Pharr TX, 78577
- E. Owner: City of Pharr, Mr. Ed Wylie, Interim City Manager
- F. Owner Project Number: - - -C -
- G. Consultant: Cobb Fendley

1.02 PROPOSER'S CHECKLIST

- A. In an effort to assist the Proposer in properly completing all documentation required, the following checklist is provided for the Proposer's convenience. The Proposer is solely responsible for verifying compliance with proposal submittal requirements.
- B. Attach this completed checklist to the outside of the Submittal envelope.
 - ☐ Used the Proposal Bid Form provided in the Project Manual.
 - ☐ Prepared the Proposal Form as required by the Instructions to Proposers. (Section 00210)
 - ☐ Attached to the Proposal Form: Proposal Bond OR a certified cashier's check in the amount of five percent (5%) as required. (Section 00300 P. 1)
 - ☐ Indicated on all pricing as required, to include Sub-totals & Totals. (Section 00300 P. 2-6)
 - ☐ Attached to the Proposal Form: Proposal Supplement Form - Allowances. (Not Applicable)
 - ☐ Attached to the Proposal Form: Proposal Supplement Form – Extra Unit Prices. (Not Applicable)
 - ☐ Attached to the Proposal Form: Proposed Schedule of Manufacturers/Suppliers. (Not Applicable)
 - ☐ Attached to the Proposal Form: Proposer Qualifications. (Section 00180 P. 1 & 2)
 - ☐ Indicated on the Proposal Form the Addenda received. (Section 00300 P. 4)

- ☐ Signature Page (signed). (Section 0300 P. 4 & 5)
- ☐ Proposal envelope shows name and address of the Proposer.
- ☐ Proposal envelope shows the Proposer's Contractor's License Number.
- ☐ Proposal envelope shows name of Project Number and Project name being proposal.
- ☐ Proposal envelope shows time and day of Proposal Opening.
- ☐ Verified that the Proposer can provide executed Performance Bond and Payment Bond (Labor and Material Bond).
- ☐ Verified that the Proposer can provide Certificates of Insurance in the amounts indicated.

END OF DOCUMENT



PROJECT NAME & NO.	City of Pharr Fiber Optic Network - Phase IV Labor		
JOB LOCATION	Mid Pharr		
PROPOSAL DATE	April 5, 2022	PROJECT START DATE	TBD
OWNER INFORMATION		CONTRACTOR INFORMATION	
OWNER NAME	City of Pharr	CONTRACTOR COMPANY NAME	STX Underground LLC
OWNER CONTACT NAME	Mr. Ed Wylie, City Manager	CONTRACTOR CONTACT NAME	Rolando Martinez
ADDRESS	118 S. Cage Blvd., Pharr, TX 78577	ADDRESS	144 Country Club Rd#2, Brownsville, TX 78520
OWNER PHONE	(956) 402-4231	CONTRACTOR PHONE	(956) 312-6530
OWNER EMAIL		CONTRACTOR EMAIL	stxundergroundllc@gmail.com
SCOPE OF WORK			
Installation of quantities detailed on "Construction / Labor Units" bidsheet attached.			
MATERIALS AND SERVICES NOT INCLUDED			
STX Underground proposes to provide all the labor, equipment, and services necessary for the installation of the materials specified in the "Construction / Labor Units" bid sheet attached. City of Pharr* *All Materials to be Provided by the			
AGREEMENT TERMS			
As per the City of Pharr's Contract Documents. TIPS Contract No.: 200201-3132 The proposed duration for Phase IV Labor is six (6) months. A detailed construction schedule will be developed with the City's input to determine priority of work packages.			
PROPOSAL MAY BE WITHDRAWN IF NOT ACCEPTED BY DATE OF			May 5, 2022
PROPOSAL TOTAL			
\$12,169,621.35 (Itemized breakdown provided in subsequent sheets.)			
ACCEPTANCE OF PROPOSAL			
Proposed costs, specifications, and conditions detailed above are accepted, and specified work is authorized to begin upon issuance of the notice to proceed.			
Payment for services rendered will be made as specified in the contract documents.			
STX UNDERGROUND LLC SIGNATURE		DATE	April 5, 2022

Construction/Labor Units					
UNIT CATEGORY	CLARIFICATION / DESCRIPTION	UNIT OF MEASURE	Estimated total	Unit Price	Total
UGB	Construction - Place NEW 1-1.25" HDPE	FT	280,842	\$ 12.50	\$ 3,510,525.00
UGB	Construction - Place NEW 1-1.25" HDPE	FT	80,375	\$ 12.50	\$ 1,004,687.50
UGB	Construction - Place NEW 3-1.25" HDPE	FT	7,228	\$ 13.00	\$ 93,964.00
UGB	Construction - Place NEW 1-2" HDPE	FT	40,889	\$ 12.50	\$ 511,112.50
UGB	Construction - Place NEW 2-2" HDPE	FT	157,601	\$ 13.00	\$ 2,048,813.00
UGB	Construction - Place NEW 3-2" HDPE	FT	0		\$ -
UGB	Construction - Place NEW 1-4" HDPE	FT	0		\$ -
UGB	Construction - Place NEW 2-4" HDPE	FT	0		\$ -
UGB	Construction - Install Coupler 1.25"-4"	EA	1,421	Included in Conduit Unit Price	
FIBER	Construction - Place 1 NEW / 24F - 576F Cable (Includes	FT	402,417	\$ 1.17	\$ 470,827.89
FIBER	Construction - Place 1 NEW / 24F - 864F Aerial Cable (Includes Slack)	FT	499	\$ 4.00	\$ 1,996.00
FIBER	Additional Cable Installation Adder	FT	0		\$ -
FIBER	Construction - Place MSTs (50' to 750') in conduit	EA	2,781	\$ 471.75	\$ 1,311,936.75
UGB	Construction - Place NEW 17"x30"x30" (Handhole)	EA	2,644	\$ 275.00	\$ 727,100.00
UGB	Construction - Place NEW 24"x36"x24" (Handhole)	EA	41	\$ 300.00	\$ 12,300.00
UGB	Construction - Place NEW 30"x48"x36" (Handhole)	EA	615	\$ 300.00	\$ 184,500.00
UGB	Placement of Fiber Distribution Hubs (FDH) Vault Mounted (incl. Splitter Install)	EA	32	\$ 800.00	\$ 25,600.00
UGB	Placement of Fiber Distribution Hubs (FDH) Sub Surface (incl. Splitter Install)	EA	0		\$ -
UGB	Construction - Place NEW Cable Marker	EA	30	Included in Conduit Unit Price	
UGB	Construction - Place Tracer Wire	FT	10,867	\$ 0.50	\$ 5,433.50
UGB	Construction - Place Flat Drop Kits	EA	945	\$ 35.00	\$ 33,075.00
SPL	Splicing - Prep Splice Closure	EA	423	\$ 250.00	\$ 105,750.00
SPL	Splicing- Fusion Splice-Ribbon	EA	100	\$ 28.00	\$ 2,800.00
SPL	Splicing - Fusion Splice-Loose Tube	EA	19,035	\$ 35.00	\$ 666,225.00
UGB	Construction - Place NEW Core Bore(s)	EA	0		\$ -
UGB	Construction - NEW Remove & Restore Sidewalk	SF	16	\$ 31.00	\$ 496.00
UGB	Construction - NEW Remove & Restore Asphalt	SF	0		\$ -
ISP	Drop Service (<200')	EA	0		\$ -
ISP	Drop Service Adder (100+ after 200')	EA	0		\$ -

ISP	Building Cable Entrance (Commerical) incl. Core Drill	EA	11	\$ 350.00	\$ 3,850.00
ISP	Place Hoffman Box	EA	7	\$ 100.00	\$ 700.00
ISP	Place EMT	LF	610	\$ 560.00	\$ 341,600.00
ISP	Place Plenum Innerduct	LF	0		\$ -
AER	Construction-Install Strand	FT	0		\$ -
AER	Construction-Install Anchor and Down Guy	EA	0		\$ -
AER	Construction-Install Fiber Snow Shoe	EA	0		\$ -
AER	Construction- Install pole mounting hardware and bonding	EA	0		\$ -
AER	Construction - Place/Attach NEW Aerial Riser(s)	EA	0		\$ -
				Sub-Total:	\$ 11,063,292.14
CON	Owner Contingency (10% of Sub-Total)	EA	1	\$ 1,106,329.21	\$ 1,106,329.21
			0	Total:	\$ 12,169,621.35

TeamPharr.net
Phase IV Preliminary
Labor Schedule

ID	 Task Mode	Task Name	Duration	Start	Finish	Predecessors	Resource Names	Dec '21	Jan '22	Feb '22	Mar '22	Apr '22	May '22	Jun '22	Jul '22	Aug '22	Sep '22	Oct '22	Nov
1		Bore & Pull Conduit	67 days	Mon 5/9/22	Tue 8/9/22														
2		Place Handholes	98 days	Mon 5/16/22	Wed 9/28/22	1SS+5 days													
3		Pull Fiber	60 days	Mon 7/11/22	Fri 9/30/22	4SS-20 days													
4		Fusion Splicing	62 days	Mon 8/8/22	Tue 11/1/22	2SS+60 days													

Project: STX Phase III Schedule
Date: Tue 4/5/22

Task		Project Summary		Manual Task		Start-only		Deadline	
Split		Inactive Task		Duration-only		Finish-only		Progress	
Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
Summary		Inactive Summary		Manual Summary		External Milestone			

SECTION 00410
AGREEMENT

STATE OF TEXAS
COUNTY OF HIDALGO

THIS AGREEMENT made and entered into this the ____ day of ____A.D., 202_, by and between **THE CITY OF PHARR** of the State of Texas, acting through Mayor of the City of Pharr thereunto duly authorized so to do, Party of the First Part, hereinafter called OWNER, and STX UNDERGROUND, LLC, Party of the Second Part hereinafter termed CONTRACTOR.

WITNESSETH, that the Contractor and the Owner for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK:

The contractor shall under the terms stated in the general conditions furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories shown on addendum's, drawings as described in the specifications for the following project.

PROJECT NO. 2122-01-510-C007-001
FIBER OPTIC NETWORK PHASE IV - LABOR

ARTICLE 2. INSURANCE AND BONDS:

The contractor shall according to the specifications shall provide Performance and Payment Bonds and Insurance during the duration of the project.

ARTICLE 3. TIME OF COMPLETION:

The Owner shall provide a Notice to Proceed in which a date for commencement of the work shall be stated; such commencement date shall be **ten (10) days** after the date of the notice. The Contractor shall achieve substantial completion of the work within **One hundred eighty two (182) calendar days** for initial task order after such commencement date (future task orders shall express commencement date & completion date "as needed") and completion within **thirty (30) calendar days** after the substantial completion. The completion date may be extended by approved Change Orders.

If the contractor fails to complete this contract in the calendar days specified, the time charge will be made for each calendar day thereafter.

The time set forth in the proposal for the completion of the work is an essential element of the contract. For each calendar day in addition to the calendar days herein before stated as extended by the Owner, the amount per day given in the following schedule will be deducted from the money due or to become due to the Contractor not as a penalty, but as added expense for Engineering/Architectural supervision.

ARTICLE 4. SCOPE OF THE WORK AND CONTRACT SUM:

The Contractor hereby agrees to furnish all of the materials and all of the equipment and labor necessary and to perform all of the work shown on the drawings and described in the specifications for the **Project No. 2122-01-510-C007-001** entitled **FIBER OPTIC NETWORK PHASE IV - LABOR** for the contract amount of **\$12,169,621.35** twelve million, one hundred sixty nine thousand, six hundred twenty one dollars and thirty five cents.

- (a) Drawings prepared for same by **Robert Salinas, P.E.**
- (b) Specifications consisting of:
1. "Standard General Specifications" issued by the CITY OF PHARR and as issued in the contract documents.
 2. The "General Conditions for Engineering/Architectural Construction".
 3. Addenda
NO. _____ DATED _____
NO _____ DATED _____

ARTICLE 5. AWARD OF CONTRACT:

This Agreement is a contract for the services of Construction, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between parties with respect to the project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.

BY SIGNING BELOW, the parties have executed and bound themselves to this Agreement as of the day and year first above written.

CONTRACTOR

CITY OF PHARR

By: _____
Authorized Signor

By: _____
Authorized Signor

(name) – (title)

Ed Wylie, Interim City Manager
(name) – (title)

Date: _____

Date: _____

ATTEST:

By: _____
Signature

By: _____
Signature

(name) – (title)

(name) – (title)

END OF SECTION

APPROVED AS TO FORM:

PATRICIA RIGNEY, CITY ATTORNEY

SECTION 00450
PROPOSAL BOND

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. This section describes the standardized proposal bond form to be submitted with the proposal on the project.

1.02 DEFINITIONS

- A. Refer to Section 0700

1.03 PROPOSAL BOND FORMS

- A. Proposer is to inset an original proposal bond, or a copy of cashier's check provided for proposal bond Purposes. Original check is to be submitted along with proposal.

PART 2 - PRODUCT - NOT USED

PART 3 - EXECUTION

3.01 GENERAL

- A. Standardized forms follow.

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned (Contractor) as Principal, and (Surety) as Surety, are hereby held and firmly bound unto the CITY OF PHARR as OWNER in the penal sum of five percent (5% of proposal amount) for the payment of which sum, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this _____ day of _____, 202__.
(Day) (Month)

The Condition of the above obligation is such that whereas the Principal has submitted to **CITY OF PHARR** a certain PROPOSAL, attached hereto and hereby made a part hereof to enter into a contract in writing for the construction

PROJECT NO. 2122-01-510-C007-001

FIBER OPTIC NETWORK PHASE IV - LABOR

NOW, THEREFORE,

- (A. If said PROPOSAL shall be rejected, or in the alternate
- (B. If said PROPOSAL shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said PROPOSAL) and shall furnish a BOND for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith and shall in all other respects perform the agreement created by the acceptance of said PROPOSAL then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such PROPOSAL; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Principal

Witness

Title

Surety

Witness

By: Attorney-in-Fact

IMPORTANT - Surety companies executing BONDS must be authorized to transact business in the State where the project is located.

END OF SECTION

SECTION 00510
NOTICE OF AWARD

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. This section describes the standardized Notice of Award form for use in the project.

1.02 DEFINITIONS

- A. Refer to Section 0700

PART 2 - NOT USED

PART 3 - EXECUTION (FORMS ON FOLLOWING PAGES)

3.01 GENERAL

- A. Standardized form follows.

APPROVAL OF SUB-CONTRACTORS
PROJECT NO. 2122-01-510-C007-001
FIBER OPTIC NETWORK PHASE IV - LABOR

Prime contractors will not permit any Sub-contractor to start work on the project until the Sub-contractor has been approved by the project owner.

NAME AND ADDRESS OF PRIME CONTRACTOR:

SUB-CONTRACT DATA

NUMBER	TYPE OF WORK	SUB-CONTRACTORS NAME & ADDRESS	CONTRACT AMOUNT	ANTICIPATED START DATE	ANTICIPATED END DATE

CERTIFICATION BY PRIME CONTRACTOR

Each Sub-contractor listed above has established his/her ability and responsibility to perform the work to which the sub-contract relates. The applicable provisions of the contract, including labor and equal opportunity provisions, shall govern the work to which the subcontract relates, and each subcontractor has been advised as to the necessary contract provisions and the requirement to incorporate them in each subcontract.

CONTRACTOR

DATE

APPROVED:

CONCUR:

END OF SECTION

SECTION 00550
NOTICE TO PROCEED

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. This section describes the standardized Notice to Proceed form for use in the project.

1.02 DEFINITIONS

- A. Refer to Section 0700

PART 2 - PRODUCT - NOT USED

PART 3 - EXECUTION (FORMS ON FOLLOWING PAGES)

3.01 GENERAL

- A. Standardized form follows.

NOTICE TO PROCEED

Date

Contractor

Attn: Owner

Address

City, State Zip Code

RE: **PROJECT NO.**
FIBER OPTIC NETWORK PHASE IV - LABOR

Project Location: Pharr, TX

Contract Amount: \$xxxxxxxxxx

This is to inform you that **(contractor)** may proceed with the construction of the above referenced project as of **(date)**. The construction period for this project will be **(word)** **(number)** consecutive calendar days. The construction time will expire on **(date)**. Please review and abide by the construction plans and specifications throughout the execution of the work. Please submit a proposed construction schedule to the **Maria Rangel, Assistant Director Engineer** for concurrence as soon as possible. Failure to submit the proposed construction schedule may delay payments. If there are any questions, please call (956) 402-4221.

Ed Wylie
Interim City Manager

CC: Ignacio, Purchasing Director
Maria Rangel, Assistant Director Engineer

END OF SECTION

SECTION 00620
PERFORMANCE AND PAYMENT BOND

PART 1 - GENERAL

1.01 SECTION INCLUDES DEFINITIONS

- A. Refer to Section 0700

1.02 PERFORMANCE AND PAYMENT BOND (OR BONDS)

- A. Following the current Section, Contractor shall insert the approved form of the statutory surety bond or bonds to ensure the performance of the Contract and payment of labor and materials. In addition to the corporation signatures of the surety company (ies) on the bond(s), each bond should be countersigned by the surety company's attorney-in-fact, authorize to act within the State in which the Project is situated.
- B. The following form is provided for sample purposes only. Contracts and agreements have important legal consequences. It is imperative that you consult with your attorney concerning the proper drafting, completion, or modification of such documents.

1.03 PERFORMANCE AND PAYMENT BONDING REQUIREMENTS

- A. Pursuant to the Texas Uniform Grant and Contract Management Act of 1981, the following minimum requirements apply to all contracts exceeding \$25,000 in total value:
1. Performance bond on the part of the contractor for 100% percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract. Only if specifically noted in the Instructions to Proposers (Section 00210), for contracts under \$50,000, Owner may exercise an option of withholding payment to construction contractors until completion of construction and acceptance of work by the Owner in lieu of such performance bonds.
 2. A payment bond on the part of the contractor for 100% percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

PART 2 - PRODUCT - NOT USED

PART 3 - EXECUTION (FORMS ON FOLLOWING PAGES)

3.01 GENERAL

- A. Standardized forms follow.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, THAT _____

(Name of Contractor or Company)

(Address)

a _____ hereinafter called Principal, and
(Corporation/Partnership)

(Name of Surety Company)

(Address)

hereinafter called Surety, are held and firmly bound unto _____

(Name of Recipient)

(Recipient's Address)

hereinafter called OWNER, in the penal sum of no less than 100% of the contract price _____ (_____) dollars in lawful money of the United States, for the payment of which sum we bind ourselves, our successors, and assigns, jointly and severally, by these presents, and shall remain in effect for one year beyond the date of approval by the political subdivision's engineer.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER dated the _____ day of _____, 202__, a copy of which is hereto attached and made part thereof for the construction of:

PROJECT NO. 2122-01-510-C007-001
FIBER OPTIC NETWORK PHASE IV - LABOR

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties in all the undertakings, covenants, terms, conditions, and agreement of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if it shall satisfy all claim and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it 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 any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in four counterparts, each one of which shall be deemed an original, this the _____ day of _____ A.D., 20____.

ATTEST:

(Principal) Secretary
(SEAL)

Witness as to Principal

(Address)

Principal

Signature

(Print/Type Name)

(Address)

ATTEST:

(Surety) Secretary
(SEAL)

Witness as to Surety

(Address)

Surety

Attorney-in-Fact (Signature)

(Print/Type Name)

(Address)

NOTE: Date of Bond must not be prior to date of Contract (1) Correct name of Contractor; (2) A Corporation, a Partnership or an Individual, as case may be; (3) Correct name of Surety; (4) Correct name of Owner; (5) County or Parish and State; (6) Owner; (7) If Contractor is Partnership, all partners should execute bond.

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PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, THAT _____

(Name of Contractor or Company)

(Address)

a _____ hereinafter called Principal,
and
(Corporation/Partnership)

(Name of Surety Company)

(Address)

hereinafter called Surety, are held and firmly bound unto _____

(Name of Recipient)

(Recipient's Address)

hereinafter called OWNER, in the penal sum of no less than 100% of the contract price [] (_____), dollars in lawful money of the United States, for the payment of which sum we bind ourselves, our successors, and assigns, jointly and severally, by these presents and remain in effect for one year beyond the date of approval by the political subdivision's engineer.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER dated the _____ day of _____, 202__, a copy of which is hereto attached and made part thereof for the construction of:

**PROJECT NO. 2122-01-510-C007-001
FIBER OPTIC NETWORK PHASE IV - LABOR**

NOW THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUB-CONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUB-CONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in four counterparts, each one of which shall be deemed an original, this the _____ day of _____ A.D., 20____.

ATTEST:

(Principal) Secretary
(SEAL)

Witness as to Principal

(Address)

ATTEST:

(Surety) Secretary
(SEAL)

Witness as to Surety

(Address)

Principal

Signature

(Print/Type Name)

(Address)

Surety

Attorney-in-Fact (Signature)

(Print/Type Name)

(Address)

NOTE: Date of Bond must not be prior to date of Contract (1) Correct name of Contractor; (2) A Corporation, a Partnership or an Individual, as case may be; (3) Correct name of Surety; (4) Correct name of Owner; (5) County or Parish and State; (6) Owner; (7) If Contractor is Partnership, all partners should execute bond.

END OF SECTION

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SECTION 00700

TERMS AND DEFINITIONS

PART 1 - GENERAL

Whenever the following terms, titles, or abbreviations are used in these Specifications or in any document or instrument where these Specifications govern, the intent and meaning shall be as herein defined. Working titles having a masculine gender, such as "workman" and "journeyman" and the pronoun "he", are utilized in the specifications for the sake of brevity, and are intended to refer to persons of either gender.

1.01 ABBREVIATIONS

AAN Nurserymen	American Association of
AASHTO Officials	American Association of State Highway and Transportation
AC Concrete	Asphalt
ACI Institute	American Concrete
AI Institute	Asphalt
AIA Architects	American Institute of
AIEE Engineers	American Institute of Electrical
AISC	American Institute of Steel
Construction AISI Institute	American Iron and Steel
ANSI	American National Standards
Institute, Inc. APA	American Plywood Association
API Institute	American Petroleum
APWA Association	American Public Works
ARA Association	American Railway
AREA Association	American Railway Engineering
ASA Association	American Standards

ASCE Engineers	American Society of Civil
ASME Engineers	American Society of Mechanical
ASTM Materials	American Society for Testing and
AWG	American Wire Gage
AWS Society	American Welding
AWWA Association	American Water Works
CRSI CSI Institute	Concrete Reinforcement Steel Institute Construction Specifications
CY	Cubic
EA	Each
EP	Edge of Pavement
FS	Federal Specifications
IEEE	The Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
INV	Invert
ISA	International Society of Arboriculture
LB	Pound
LF	Linear Feet
LS	Lump Sum
MSS Standards	Manufacturer's Standardization Society of the Valve and Fitting Industry
MUTCD	Manual Uniform Traffic Control Devices
NBFU	National Board of Fire Underwriters
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NSF	National Sanitation
Foundation OSHA Health Act PCA Association	Occupational Safety and Portland Cement
PCC	Portland Cement Concrete

PG	Performance Grade
SD	Storm Drain
SF	Square Foot/Feet
SS	Sanitary Sewer
SSPWC	Standard Specifications for Public Works Construction
STA	Station
TOC	Top of Curb
Typ.	Typical
TxDOT	Texas Department of Transportation
UL	Underwriters' Laboratories, Inc.

1.02 DEFINITIONS

Acceptance -- The formal written acceptance by the City of the entire Contract which has been completed in all respects in accordance with the Specifications and any approved modifications.

Addenda -- Any written change, clarification or supplement to documents issued for bidding, issued by the City or its Engineer prior to proposal.

Agency -- Shall mean the City of Pharr, or another agency or district that may adopt these Specifications, acting through its authorized representatives.

Allowance -- An amount of money set aside under the Contract for a special purpose identified in the Contract.

Architect and/or Consulting Engineer -- A person or persons, firm, partnership, joint venture, corporation, or combination thereof or authorized representative thereof, acting in the capacity of consultant to the City of Pharr. The Architect or Consulting Engineer shall issue directions to the Contractor only through the City of Pharr. When the Specifications require that approval be obtained from the Architect or Consulting Engineer, such approval shall be requested from and be given by the City of Pharr.

As-Builts -- See "Record Drawings".

As Shown, Etc. -- Where "as shown", "as latest indicated", "as detailed", or words of similar import are used, the reference is to the Contract unless specifically stated otherwise. Where "as directed", "as permitted", "approved", or words of similar import are used, they shall mean the direction, permission, or approval of the City of Pharr.

Award -- The decision to accept the proposal by the city council of the lowest responsible proposer for the Work, subject to the execution and approval of a satisfactory contract therefore and bond to secure the performance thereof, and to such other conditions as may be specified or required by law.

Proposal -- When submitted on the prescribed proposal form, properly signed and guaranteed, the Proposal constitutes the offer of the Proposer to complete the Work at the price shown on the Proposer's proposal form.

Proposal Bond -- The cash, cashier's check, certified check, or proposer's bond accompanying the proposal submitted by the proposer, as a guarantee that the proposer will enter into a Contract with the City for the performance of Work herein described.

Proposer -- Any person, persons, firm, partnership, joint venture, corporation, or combination thereof, submitting a Proposal for the Work, acting directly or through a duly authorized representative.

Proposal Documents -- The sum of the documents that comprise the Proposal by a Proposer to perform the Work.

Proposal Opening -- The event conducted by the City of Pharr during which the sealed Proposals submitted by Proposers to perform the Work are opened and publicly read.

Proposal Security -- The cash, cashier's check, certified check, or proposer's bond accompanying the proposal submitted by the proposer, as a guarantee that the proposer will enter into a Contract with the City for the performance of Work herein described.

Calendar Day -- Every day shown on the calendar. When the Contract Time is stated in Calendar Days, every day will be charged toward the Contract Time.

City -- The City of Pharr, a political sub-division of the County of Hidalgo and the State of Texas.

Claim -- A separate demand by the contractor for (i) a time extension, (ii) payment of money or damages arising from work done by or on behalf of the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (iii) an amount the payment of which is disputed by the City.

Contract -- The written agreement signed by the City of Pharr and the Contractor covering the Work and the furnishing of labor, materials, tools, and equipment in the construction of the Work. The Contract shall include the Notice to Contractors, Proposal, Plans, Specifications, Special Provisions, contract bonds, and any project-specific specifications or documents; also any and all supplemental agreements amending or extending the Work contemplated and which may be required to complete the Work in a substantial and acceptable manner. Supplemental agreements are written agreements covering alterations, amendments, or extensions to the Contract and include Contract Change Orders.

Contract Change Order -- A Contract amendment approved by the City of Pharr that includes, but is not limited to, alterations, deviations, additions to, or deletions from, the Contract which are required for the proper completion of the Work.

Contract Documents -- The Contract Documents are the collective term for all of the documents listed in Article I of the Contract.

Contracting Officer -- The City Manager of the City of Pharr or the City Manager's representative authorized to enter into a contract on behalf of the City of Pharr.

Contractor -- The person or persons firm, partnership, joint venture, corporation, or combination thereof, private or municipal, who (that) has (have) entered into a Contract, as defined in these Specifications, with the City of Pharr.

Contract Time -- The time stated in the Contract for completion of the Work. The Contract Time may be a single allotment of time, a group of times specific to portions of the Work, or a combination of the two.

Council Member -- A member of the City of Pharr City Council.

Datum -- The Figures given in the Specifications or upon the drawings after the word "Elevation" or an abbreviation of it, shall mean U.S.G.S datum, unless otherwise noted.

Days -- Unless otherwise designated, days as used in the Contract Documents shall mean calendar days.

Elevation -- The figures given on the Plans or in the other Contract Documents after the word "Elevation" or abbreviation of it shall mean the distance in feet above the standard datum used by the City.

Engineer -- The City Engineer for which work will be done under these Specifications, acting personally or through agents or assistants duly authorized by the Director.

Estimated Quantities -- The list of items of work and the estimated quantities associated with the Work. The Estimated Quantities provide the basis for the Proposal.

Extra Work -- Work other than that required either expressly or implied by the Contract in its executed form.

Field Instructions -- Direction given, in writing, by a City representative.

Haul Route -- Route for ingress and egress of materials hauled to and from a project site within the City limits.

Inspector -- The person or persons authorized to act as agent(s) for the City of Pharr in the inspection of the Work.

Major Proposal Item -- Five percent (5%) of the total contract proposal price.

Notice To Contractors -- The written notice whereby interested parties are informed of the date, location, and time of the Proposal Opening of a proposed City of Pharr Project and the terms and conditions of submitting Proposals to perform the Work.

Notice To Proceed -- The written authorization by the City of Pharr to the Contractor specifying the date the Work may begin and any conditions regarding the beginning of the Work.

Or Equal -- The term "or equal" shall be understood to indicate that the "equal" product be the equivalent or better than the product named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the Engineer.

Plans -- The plans, drawings, profiles, cross sections, Working Drawings, and Supplemental Drawings, or reproductions thereof, approved by the City of Pharr, which show the locations, character, dimensions, and details of the Work.

Plant -- All physical, resources, facilities, machinery, equipment, staging, tools, work and storage space other than provided by the Contract, together with subsidiary essentials and necessary maintenance for proper construction and acceptable completion of the project.

Project -- Shall mean the Work.

Project Manager -- The person designated by the City as its project management representative during the course of construction, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

Proposal -- Shall mean "Proposal".

Record Drawings -- Drawings prepared by the Engineer that document changes to, additions to, or deductions from the Plans, and which represent the Work as constructed.

Schedule of Values -- A statement furnished by the Contractor to the City of Pharr reflecting the portions of the Total Contract Price allotted for the various parts of the Work for each work activity contained on the project schedule. Unless otherwise indicated in the Specifications, the total of the Schedule of Values shall equal the full cost of the Work, including all labor, material, equipment, overhead, and profit. For lump sum contracts, the Schedule of Values is the basis for reviewing the Contractor's application for progress payments.

Shop Drawings -- Drawings prepared by the fabricator or supplier showing the layout and details of components fabricated in a shop for inclusion in the permanent facility (e.g., structural steel, reinforcing steel, railings).

Site -- The area upon or in which the Contractor's operations are carried on and such other areas adjacent thereto as may be designated by the Engineer.

Special Provisions -- The Special Provisions are specific clauses setting forth conditions or requirements peculiar to the Work and supplementary to these Standard Construction Specifications.

Standard Construction Specifications -- The directions, provisions, and requirements contained herein. When the term "Standard Specifications" or "these Specifications" is used, it means the provisions as set forth herein, together with any amendments or revisions that may be set forth in the Special Provisions. The Standard Specifications are comprised of "General Provisions" and "Technical Provisions".

Standard Drawings -- The Standard Drawings of the City of Pharr, which are incorporated into the Standard Construction Specifications, and made a part of the Plans by reference to one or more specific Standard Drawings.

State -- The State of Texas.

State Specifications -- The version of the Standard Specifications of the State of Texas, Department of Transportation, in effect at the time of Notice to Contractors.

Subcontractor -- A properly licensed party under contract to and responsible to the Contractor for performing a specified part of the Work; or a properly licensed party under contract and responsible to a Subcontractor of the Contractor.

Supplemental Conditions -- Additions, revisions, special directions, and requirements peculiar to a project site and not otherwise thoroughly set forth in General and/or Specifications.

Supplemental Drawing -- Supplemental Drawings define the Plans or Specifications in greater detail by providing additional information that may have not been specifically or clearly shown or called out on the Plans or in the specifications.

Technical Provisions -- The provisions of the Standard Construction Specifications that describe the technical aspects of the Work.

Total Contract Price -- The total price for the Work as proposal by the Contractor, including any additions or subtractions made via Contract Change Orders.

Work -- All actions which the Contractor is contractually required to do as specified, indicated, shown, contemplated, or implied in the Contract to construct the Work, including all alterations, amendments, or extensions made by Contract Change Order or other written orders or directives of the City of Pharr. Unless specified otherwise in the Contract, the Work includes furnishing all materials, supplies, equipment, tools, labor, transportation, supervision, and all incidentals necessary to complete the Work.

Working Day -- Any day except: (a) Saturdays, Sundays, and legal holidays; (b) days on which the Contractor is specifically required by the Special Provisions or by law to suspend construction operations; or (c) days on which the Contractor is prevented from proceeding with the current controlling operation or operations of the Work for at least five (5) hours per day due to inclement weather, or conditions resulting immediately therefrom; or (d) as defined in the executed contract.

Working Drawing -- Working Drawings detail a particular item of work and the manner in which it is to be accomplished or performed. Working Drawings are prepared by the Contractor as a submittal or a portion of a submittal and may be specifically requested by the City of Pharr or required in the Contract or a Field Instruction or other written directive.

Written Notice -- "Written Notice" shall be deemed to have been duly served when 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 if delivered at or sent by U.S. mail to the last business address known to him who gives the notice.

END OF SECTION

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

SECTION 0710

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. 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, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 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. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document 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, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer

has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *Notice to Proceed*—A written notice 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.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *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.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *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.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *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, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *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.
40. *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.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *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 a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *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 but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *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; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs 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 Article 10 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- 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 15.03 or 15.04).
- 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. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- 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. *Bonds*: 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 Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), 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;
 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.

2.04 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 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, 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 and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 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 2.03.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 the component parts of the Work.

2.06 Electronic Transmittals

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, 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.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 Reference Standards

- A. Standards Specifications, Codes, Laws and Regulations
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, 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, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract 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, reference standard, 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 part of the Contract Documents prepared by or for Engineer. 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 part of the Contract Documents prepared by or for Engineer.

3.03 Reporting and Resolving Discrepancies

- A. *Reporting Discrepancies:*
 - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents:* If, before or 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) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) 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 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
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 part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); 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 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers 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 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; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- 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.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *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 Contract 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 Contract. 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 Contract, whichever date is earlier.

4.02 *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 such date.

4.03 *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 shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 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 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. 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, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, 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 Times and Contract Price. 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.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. 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. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 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.
- 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 permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 Use of Site and Other Areas

- A. *Limitation on Use of Site and Other Areas:*
 - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, 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 directly or indirectly, in whole or in part

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent 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 and adjacent areas 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 of 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 structures or land to stresses or pressures that will endanger them.

5.03 *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 adjacent 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); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on 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.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site 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 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; 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 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. 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 Paragraph 13.03; and,

- c. 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.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a 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 otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent 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 do not warrant or guarantee 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 information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then 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 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - 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 Paragraph 13.03;
 - c. 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; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 Hazardous Environmental Conditions at Site

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on 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 removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) 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 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. 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, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. 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, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. 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 (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, 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. 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 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond 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 the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then 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 bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, 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.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 Contractor's Insurance

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 2. claims for damages insured by reasonably available personal injury liability coverage.
 3. 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.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against 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. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; 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 (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
 - 1. include at least the specific coverages provided in this Article.
 - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 - 5. be appropriate for the Work being performed and provide protection from claims that 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.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, 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.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable 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 Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 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; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; 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. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
 - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, 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 insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the 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 Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, 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 or Contractor as trustee or fiduciary, 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 occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.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, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, 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 builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *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.
- 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.

7.02 *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, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *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, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work 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.

7.04 "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 Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item 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 is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that 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, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, 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;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
 - 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.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. 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:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) 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
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. 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.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. 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 the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. 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.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. 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.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

O. 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 money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *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.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, 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 the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09 *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.

7.10 *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 or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and 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 such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.12 *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, other work in progress, 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 Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
 - 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 7.12.A.2 or 7.12.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 at its expense (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 protection 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 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
 - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *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.

7.14 *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.

7.15 *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.

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the 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 and equipment 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 of that submittal, and that Contractor approves the 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 set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- 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 7.16.D.

2. *Samples:*

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall 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 7.16.D.

3. 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. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

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 or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample 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 7.16.A.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 will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

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.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *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 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;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, 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 7.18.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 7.18.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.

7.19 *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 Laws and Regulations.
- 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, 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, 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 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 Other Work

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. 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.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, 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.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. 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.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all 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 damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *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.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *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 (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- 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.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *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.

10.02 *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 10.08. 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.

10.03 Project Representative

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. 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.

10.04 Rejecting Defective Work

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 Shop Drawings, Change Orders and Payments

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. 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, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 Determinations for Unit Price Work

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 Decisions on Requirements of Contract Documents and Acceptability of Work

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 Limitations on Engineer's Authority and Responsibilities

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, 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 15.06.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 10.08 shall also apply to the Resident Project Representative, if any.

10.09 Compliance with Safety Program

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes 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. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 Owner-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. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 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, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. 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, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, 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 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.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 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - 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 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 Change Proposals

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. 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;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *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.

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work 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 13.01.C, 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, and 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 13.01.
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 6.05), 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 communication 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 that Contractor is required by the Contract Documents to purchase and maintain.

C. *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 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here 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 Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole 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, Change Proposal, Claim, set-off, or other 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 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, 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.

13.02 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*: Contractor agrees that:
 - 1. 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
 - 2. 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*: 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.

13.03 *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. Payments to Contractor for Unit Price Work will be based on actual quantities.
- 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. 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 the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price 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;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that it 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 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction 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.

14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- 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, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. 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. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then 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, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages 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 pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. 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, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 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, then 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.

14.07 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, 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, then 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 14.07, 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, 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 incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. 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 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 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 during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *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, a warehouse bond, 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.
- C. *Review of Applications:*
 - 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, 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 13.03, 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; 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 money 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 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. 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;
 - l. there are other items entitling Owner to a set off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, 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, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

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 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 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 and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- 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 preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. 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 punch list.

15.04 Partial Use or Occupancy

- 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. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be 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 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work 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 15.03 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 6.05 regarding builder's risk or other property insurance.

15.05 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, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 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, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) 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, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

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 have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. 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 15.07. 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. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 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 Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 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 to 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. 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 repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- 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, 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 are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *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 written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and 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);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, 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 complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.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 the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,

and damages exceeds 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.

- F. 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, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 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, including fair and reasonable sums for overhead and profit on such Work;
 - 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, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (2) 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 16.03.
- 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 are not intended to preclude Contractor from submitting a Change Proposal 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 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 *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, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract 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.

18.03 *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. 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.

18.04 Limitation of Damages

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 No Waiver

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 Controlling Law

- A. This Contract is to be governed by the laws in the State of Texas. The parties agree to venue and jurisdiction in the State and District Courts of Hidalgo County, Texas.

18.08 Headings

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SECTION 00810
SUPPLEMENTARY CONDITIONS

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. This section describes the supplementary conditions of the project and contract agreement. The conditions contained in this Section are specific administrative and policy requirements in addition to the general conditions and other requirements listed in the contract documents.

1.02 REFERENCES – NOT USED

1.03 DEFINITIONS - SECTION 0700

1.04 INDEMNIFICATION

- A. The Contractor agrees to indemnify and to hold the Owner and the *(Architect or Engineer)* harmless from and against any and all damages, claims, demands, suits, judgments and costs including attorney's fees and expenses for or on account of damage to property of any person, firm corporation, or Government agency, or death of or injury to any person or persons (including property and employees of the Owner, the Contractor, and employees of the Contractor) directly or indirectly arising out of, or caused by or in connection with the performance of or failure to perform any work provided for hereunder by the Contractor, his subcontractors, or their or the Contractor's agents, servants, or employees.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, Engineer, Engineer's Consultants and the officers, directors, partners, employees, agents, other 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 Section shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, (*Architect or Engineer*), (*Architect's or Engineer's*) Consultants, and the officers, directors, partners, employees, agents, other 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 shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

1.05 INSURANCE

- A. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance this Section and the Contract Documents, shall 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, Construction Manager and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with this Section and the Contract Documents.
- B. The Contractor will shall require the subcontractors to provide to the Owner all the below insurance limits by the use of a certificate of insurance.
- C. 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.
1. Worker's Compensation Insurance: The Contractor shall procure and shall maintain during the life of this Contract, Worker's Compensation Insurance as required by the State of Texas for all of 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 Worker's Compensation Insurance for all employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance.
 2. 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 following amounts shown in Insurance Limits in Paragraph 1.06 below.

- D. Proof of Insurance: The Contractor and Subcontractors 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 ten (10) days written notice has been received by the Owner."

1.06 INSURANCE LIMITS

The Contractor and Subcontractors, at his expense, shall take out and keep in force throughout the term of this Contract, the following insurance coverage in the amounts specified below to cover all of his operations in connection with the work to be performed under the Technical Specifications. The insurance certificates shall be submitted to the Owner for acceptance prior to move in and beginning work.

MINIMUM INSURANCE REQUIREMENTS

<u>INSURANCE TYPE</u>	<u>LIMITS OF LIABILITY</u>
<u>A. Workman's Compensation</u>	\$1,000,000 per occurrence
<u>B. General Liability</u> Comprehensive Form Premises - Operations Products/Completed Operations Hazard Contractual Insurance Independent Contractors Personal Injury	\$1,000,000
<u>C. Automobile Liability</u> Comprehensive Owned Hired Non-owned	\$1,000,000
<u>D. Excess Liability</u> Umbrella Form	\$1,000,000
<u>E. Property Damage</u>	\$1,000,000

The remaining term of all policies shall extend at least to the completion date of this Contract; if the expiration date shall occur prior to final completion of all operations hereunder, Contractor shall, not less than fifteen (15) days prior to expiration date, furnish evidence of renewal of or extension of such insurance. All such evidence of insurance shall provide for ten (10) days prior notice to be given to Owner in the event of cancellation.

1.07 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAM

A. Equal Employment Opportunity

- 1.** The Contractor will not discriminate against any employee or the applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the owner.
- 2.** The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 3.** The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- 4.** The Contractor shall take affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions.
- 5.** Contractors are encouraged to participate in voluntary associations which assist in fulfilling their affirmative action obligations.

6. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority.
7. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
8. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts.
9. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

B. Affirmative Action for Handicapped Workers

1. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, promotion, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

C. Non Segregated Facilities

1. The Contractor certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees any segregated facilities at any of his establishments, or permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. As used in this paragraph the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise.

PART 2 - PRODUCT – NOT USED

PART 3 - EXECUTION – NOT USED

END OF SECTION

SECTION 00830
WARRANTY AND FINAL PAYMENT

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. This section describes the warranty and final payment. The conditions contained in this Section are specific administrative and policy requirements in addition to the general conditions and other requirements listed in the contract documents.

1.02 REFERENCES – NOT USED

1.03 DEFINITIONS – SECTION 0700

1.04 CONTRACTOR'S WARRANTY OF TITLE

- A. CONTRACTOR warrants and guarantees that 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.

1.05 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. Promptly thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefore. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefore. 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. 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.
- B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

1.06 PARTIAL UTILIZATION

- A. Use by OWNER at OWNER's option of 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, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

B. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefore. If ENGINEER considers that part of the Work to be substantially complete, the above provisions 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. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirement of regarding property insurance.

1.07 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.

1.08 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 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: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required (ii) consent of the surety, if any, to final payment; and (iii) 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 above and as approved by OWNER, the 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 or OWNER's property might in any way be responsible 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.
4. 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. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the above provisions. 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.
5. Payment becomes due within thirty days after approval, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.
6. 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 and recommendation of ENGINEER, and without terminating the Agreement, 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 above, 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.

1.09 WAIVER OF CLAIMS

- A. The making and acceptance of final payment will constitute:
 1. A waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to the above, 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 writing which are still unsettled.

PART 2 - PRODUCTS- NOT USED

PART 3 - EXECUTION - NOT USED

END OF SECTION

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SECTION 00910 MODIFICATIONS

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. This section contains information pertaining to modifications and changes of the Contract Documents for the Project.

1.02 REFERENCES – NOT USED

1.03 DEFINITIONS - SECTION 0700

1.04 MODIFICATIONS OF 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 in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) 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: (i) a Field Order; (ii) Engineer's approval of a Shop Drawing or Sample; or (iii) Engineer's written interpretation or clarification.
- C. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with Owner: (i) shall not 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 Engineer's Consultant, including electronic media editions; and (ii) shall not reuse any of 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 adoption by Engineer. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

PART 2 - PRODUCT – NOT USED

PART 3 - EXECUTION – NOT USED

END OF SECTION

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SECTION 00930

PREVAILING WAGE LEGAL REQUIREMENTS

The Contractor's attention is called to Articles 5159A and 5160 of the Revised Civil statutes of Texas which Statutes must be complied with. These articles are as follows:

ARTICLE 5159A:

SECTION 1. Not less than the general prevailing rate of per diem wages for work of a similar character in the locality which the work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work, shall be paid to all laborers, workmen and mechanics employed by or on behalf of any County, City and County, City, Town, District or other political subdivision of the State, engaged in the construction of public works, exclusive of maintenance work. Laborers, workmen and mechanics employed by contractors or subcontractors in the execution of any contract or contracts for public works with the State, or any officer or public body thereof, or in the execution of any contract or contracts for public works, with any County, City and County, City, Town, District or other political subdivision of this State, or any officer or public body thereof, shall be deemed to be employed upon public work.

SECTION 2. The public body awarding any contract for public work on behalf of the State, or on behalf of any County, City and County, City, Town, District or other political subdivision thereof, or otherwise undertaking any public work, shall ascertain the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft or type of workmen or mechanic needed to execute the contract, and shall specify in the call for proposals for said contract, and in the contract itself, what the general prevailing rate of per diem wages in the said locality is for each craft or type of workmen needed to execute the contract, also the prevailing rate for legal holiday and overtime work, and it shall be needed to execute the contract, also the prevailing rate for legal holiday and overtime work, and it shall be mandatory upon the Contractor to whom the contract is awarded, and upon any subcontractor under him, to pay not less than the said specified rates to all laborers, workmen and mechanics employed by them in the execution of the contract. The Contractor shall forfeit as a penalty to the State, County, City and County, City, Town, District or other political subdivision on whose behalf the contract is made or awarded, Ten Dollars (\$10.00) for each laborer, workman or mechanic employed for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the stipulated rates for any work done under said contract, by him, or by any subcontractor under him, and the said public body awarding the contract shall cause to be inserted in the contract a stipulation to this effect. It shall be the duty of such public body awarding the contract, and its agents and officers to take cognizance of complaints of all violations of the provisions of this Act committed in the course of the execution of the contract, and when making payments to the contractor of monies becoming due under said contract to withhold and retain therefrom all sums and amounts which shall have been forfeited pursuant to the herein said stipulation and the terms of this Act; provided, however, that no sum shall be so withheld, retained or forfeited, except from the final payment, without a full investigation by the awarding body. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of said subcontractor's failure to comply with the terms of this Act, and if payment has already been made to him the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

PREVAILING WAGE LEGAL REQUIREMENTS Continued:

SECTION 3. The contractor and each subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all laborers, workmen and mechanics employed by him, in connection with the said public work, and showing the actual per diem wages paid to each of such workers, which record shall be open at all reasonable hours to the inspection of the public body awarding the contract, its officers and agents.

SECTION 4. Any construction or repair work done under contract, and paid for in whole or in part out of public funds, other than work done directly by any public utility company pursuant to order of the Railroad Commission or other public authority, whether or not done under public supervision or direction or paid for wholly or in part out of public funds, shall be held to be “public works” within the meaning of political subdivision of this State in which the building, highway, road, excavation, or other structures, project, development or improvement is situated in all cases in which the contract is awarded by the State, or any public body thereof, and shall be held to mean the limits of the County, City and County, City, Town, District or other political subdivision on whose behalf the contract is awarded in all other cases. The term “general prevailing rate of per diem wages” shall be the rate determined upon as such rate by the public body awarding the contract, or authorizing the work, whose decision in the matter shall be final. Nothing in this act, however, shall be construed to prohibit the payment to any laborer, workman or mechanic employed on any public work as aforesaid of more than the said general prevailing rate of wages.

ARTICLE 5160. **Bond for Wages:**

Any person or persons, firm or corporation, entering into a formal contract with this State or its counties or school districts or other subdivisions thereof or any municipality therein for the construction of any public building, or the prosecution and completion of any public work shall be required, before, commencing such work, to execute the usual Penal Bond, with additional obligation that such contractor shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract. Any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the State or any adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claims and judgment of the State or municipality.

If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due to the State or municipality, the remainder shall be distributed pro-rata among said interveners. Provided, further, that all claims for labor and materials furnished to said Contractor, and all claims for labor and material furnished to any contractor shall be itemized and sworn to as required by Statutes as to mechanic’s lien claims, and such claims shall be filed with the County Clerk of the County, in which said work is being prosecuted, within ninety days from the date of the delivery of said material and the performance of said work. The County Clerk shall note on the mechanic’s lien record, the name of the claimant, the amount claimed, the name of the contractor and the name of the county, School District, other subdivisions, or municipality with which the contract was made; and the County Clerk shall index the claim under the name of the contractor and under the name of the County, School District, other subdivision or municipality; with which the contract was made.

PREVAILING WAGE LEGAL REQUIREMENTS Continued:

ARTICLE 5160. Bond for Wages Continued:

Provided further, that after completion and acceptance of completed project all moneys due contractor under said contract shall be held by the state or its counties or school districts or other subdivision, thereof or an affidavit made by Contractor that all just bills for labor and material under this contract has been paid in full by the Contractor.

Acts 1913, P. 185; Acts 1929, 41st leg., P.4881. Ch. 22 paragraph 1.

PREVAILING WAGE LEGAL REQUIREMENTS Continued:

"General Decision Number: TX20200003 01/03/2020

Superseded General Decision Number: TX20190003

State: Texas

Construction Types: Heavy and Highway

Counties: Cameron, Hidalgo and Webb Counties in Texas.

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2020

* SUTX2011-003 08/02/2011

	Rates	Fringes
CEMENT MASON/CONCRETE		
FINISHER (Paving & Structures)...	\$ 12.46	
FORM BUILDER/FORM SETTER		
(Structures).....	\$ 12.30	

PREVAILING WAGE LEGAL REQUIREMENTS Continued:

FORM SETTER (Paving & Curb).....\$ 12.16

LABORER

Asphalt Raker.....\$ 10.61
Flagger.....\$ 9.10
Laborer, Common.....\$ 9.86
Laborer, Utility.....\$ 11.53
Pipelayer.....\$ 11.87
Work Zone Barricade
Servicer.....\$ 12.88

POWER EQUIPMENT OPERATOR:

Asphalt Distributor.....\$ 13.48
Asphalt Paving Machine.....\$ 12.25
Broom or Sweeper.....\$ 10.33
Crane, Lattice Boom 80
Tons or Less.....\$ 14.39
Crawler Tractor.....\$ 16.63
Excavator, 50,000 lbs or
less.....\$ 12.56
Excavator, over 50,000 lbs..\$ 15.23
Foundation Drill, Truck
Mounted.....\$ 16.86
Front End Loader Operator,
Over 3 CY.....\$ 13.69
Front End Loader, 3 CY or
less.....\$ 13.49
Loader/Backhoe.....\$ 12.77
Mechanic.....\$ 15.47
Milling Machine.....\$ 14.64
Motor Grader Operator,
Rough.....\$ 14.62
Motor Grader, Fine Grade....\$ 16.52
Scraper.....\$ 11.07

Servicer.....\$ 12.34

Steel Worker (Reinforcing).....\$ 14.07

TRUCK DRIVER

Lowboy-Float.....\$ 13.63
Single Axle.....\$ 10.82
Single or Tandem Axle Dump..\$ 14.53
Tandem Axle Tractor with
Semi Trailer.....\$ 12.12

WELDER.....\$ 14.02

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave

PREVAILING WAGE LEGAL REQUIREMENTS Continued:

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

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

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

PREVAILING WAGE LEGAL REQUIREMENTS Continued:

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the

PREVAILING WAGE LEGAL REQUIREMENTS Continued:

Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

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

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

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

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

"

END OF SECTION

TECHNICAL SPECIFICATIONS



AGENDA MEMORANDUM



BOARD: City Commission

AGENDA ITEM #: 9.C.

DATE SUBMITTED: April 11, 2022

MEETING DATE: April 18, 2022

FROM: Jose Pena, IT Director

DEPARTMENT: IT

DIRECTOR: Jose Pena

Agenda Item: Consideration and action, if any, authorizing City Manager to enter into a master services agreement with Smartcom Telephone, LLC for maintaining data and voice services.

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue: Smartcom is now requiring all customers to adopt their master services agreement to be able to make any additions or changes to any existing services they provide. This is required in order for them to deliver services at the new Nolana PharrONE facility. This agreement does not affect existing expired month to month services currently in use. Terms of any service are determined by service order when initiated.

Fiscal Consideration: NA

Staff Recommendation: Staff recommends approval of agreement.

Alternatives: NA

Exclude Material from Public Packet? No

Reason: NA

ROUTING:

Jose Pena
Ignacio Amezcua
Patricia Rigney
Karla Saavedra
Anali Alanis
City Management Office

Created/Initiated - 4/11/2022
Approved - 4/11/2022
Approved - 4/11/2022
Approved - 4/13/2022
Approved - 4/13/2022
Final Approval - 4/14/2022



600 Ash Ave., McAllen, Texas 78501 Phone: (956) 687-7070

MASTER SERVICE AGREEMENT

THIS MASTER SERVICE AGREEMENT (this “Master Service Agreement” or “MSA”) is entered into effective as of the date set forth in the signature block of the Service Order (the “Effective Date”) by and between SmartCom Telephone, LLC (“Seller”), on behalf of itself and its applicable Affiliates (as further set forth herein), and the buyer identified and signing the Service Order (“Buyer”) for the provision of certain services, as set forth therein, to Buyer by Seller and/or its Affiliates.

As used in this Master Service Agreement and in any document incorporated into this Agreement by reference, “Agreement” means this Master Services Agreement, the Definitions and General Terms, its attachments, other documents referred to herein by reference, including, without limitation, the Product Supplements, and the Service Orders accepted by Seller pursuant to the terms hereof. In consideration of the mutual promises and agreement contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller (or, as applicable, its Affiliate) agrees to provide and Buyer agrees to purchase the Services according to the terms of this Agreement. **BY SIGNING THE SERVICE ORDER, BUYER ACKNOWLEDGES AND REPRESENTS THAT PRIOR TO ITS EXECUTION OF THE SERVICE ORDER IT HAS FULLY READ AND UNDERSTANDS (a) THIS MSA, (b) THE DEFINITIONS AND GENERAL TERMS DEFINED IN SECTION 1 BELOW, (c) EACH OF THE APPLICABLE PRODUCT SUPPLEMENTS, (d) ALL OTHER REFERENCED SCHEDULES, EXHIBITS AND/OR ATTACHMENTS, AND (e) SERVICE ORDERS EXECUTED IN CONJUNCTION HERewith OR PURSUANT TO THE TERMS HEREOF AND AGREES THAT THE DEFINITIONS AND GENERAL TERMS, THE APPLICABLE PRODUCT SUPPLEMENTS, SERVICE ORDERS AND ANY OTHER DOCUMENTS REFERRED TO AND INCORPORATED INTO THIS AGREEMENT ARE A PART OF THIS AGREEMENT AS IF SET FORTH HEREIN IN THEIR ENTIRETY. EXECUTION OF THE SERVICE ORDER CONSTITUTES AN AGREEMENT AND ACKNOWLEDGMENT THAT THE RELEASE, INDEMNIFICATION, AND LIMITATION OF LIABILITY PROVISIONS CONTAINED IN THIS AGREEMENT COMPLY WITH THE EXPRESS NEGLIGENCE RULE AND ARE CONSPICUOUS.**

1. **DEFINITIONS AND GENERAL TERMS.** The provisions set forth in Seller’s Definitions and General Terms, which are posted under the Terms & Conditions link at www.smartcomtelephone.com/terms, as of the Effective Date (the “Definitions and General Terms”) are hereby incorporated into this Agreement by reference and made a part hereof for all purposes as if fully set forth herein. In addition to terms or phrases defined elsewhere in the Master Services Agreement, in any Product Supplement or in any other part of this Agreement, where capitalized in this Agreement, the terms or phrases defined in the Definitions and General Terms shall have the meanings set forth therein.
2. **SERVICES; PRODUCT SUPPLEMENTS.** (a) Subject to Seller’s acceptance of Service Orders submitted by Buyer pursuant to the terms and conditions set forth below, Seller will provide the Services to Buyer described in and pursuant to the terms of the Product Supplement(s), which Product Supplements are posted under the Terms & Conditions link at www.smartcomtelephone.com/terms and are hereby incorporated into this Agreement by reference and made a part hereof for all purposes as if fully set forth herein.
 (b) The Services that are available pursuant to this Master Services Agreement and the applicable Product Supplements may be requested by Buyer by submission of a Service Order to Seller. Charges and rates for ordered Services shall be set forth in the Service Order, with any additional applicable rates set forth in Seller’s Miscellaneous Price Schedule. Seller’s Miscellaneous Price Schedule, if applicable, is posted under the Terms & Conditions link at www.smartcomtelephone.com/terms and may be changed from time to time by Seller during the Term of this Agreement. If requested by Buyer in a Service Order in the form required by Seller, and accepted by Seller in a Firm Order Confirmation (a “FOC”), then Seller shall provide to Buyer and Buyer shall purchase from and pay Seller for the Services set forth therein. In each Service Order submitted by Buyer, Buyer will provide (i) all of the required information set forth in the Service Order applicable to the particular Service and (ii) any other information reasonably necessary to enable Seller to provide the Service. If Seller accepts the Service Order it shall send a FOC to Buyer by facsimile, electronically or mail. If Seller desires to accept the Service Order but requires modifications of the Service Order, then Seller shall require Buyer to submit a new Service Order on mutually agreeable terms. Seller shall specify the Scheduled Service Date in the FOC provided for the applicable Service. In the event the Scheduled Service Date, Provisioning Interval or other date of service

stated in the FOC conflicts with the requested service date on the Service Order, the Service date stated in the FOC shall govern as the Scheduled Service Date, subject to written agreement of the parties to expedite or delay such date and any applicable charges for such expediting or delay. If the Commencement Date does not occur on or before the Scheduled Service Date, unless due to an act or omission of Buyer or a third party, a Force Majeure Event, or as otherwise may be provided in the applicable Product Supplement, then Buyer shall be entitled to the remedies set forth in the Product Supplement for the relevant Service, WHICH REMEDIES SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF BUYER AND THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR THE DELAY OF SERVICE. If applicable for the Service, Seller shall conduct any applicable tests as set forth in the applicable Product Supplement to demonstrate that the Service meets the specifications set forth in that Product Supplement. Buyer and its Users shall cooperate and provide reasonable assistance with same, if applicable. Seller shall notify Buyer in writing when such Service is available for use (the applicable "Installation Notification"), and the date upon which the Installation Notification is issued shall be the "Commencement Date" for the applicable Service. Charges for a Service shall begin accruing upon the earlier of (i) the commencement of the applicable Service (which shall include Buyer's transmission of any traffic, if applicable, or other use of the facilities or Service for other than testing purposes) or (ii) the later of the Scheduled Service Date or the Commencement Date.

(c) The Point of Demarcation for all applicable Services originating and terminating on Seller's facilities shall be as set forth in the Service Order, unless modified by the FOC. The Point of Demarcation for any applicable Services originating or terminating on Third Party Facilities shall be determined by the third party which owns and/or operates such facilities. For applicable Services, unless otherwise set forth in a Service Order, Seller shall be responsible for installing, maintaining and repairing equipment, and performing monitoring on Buyer's side of the Point of Demarcation; provided that any costs incurred by Seller in this regard may be recovered as Non-Recurring or Recurring Charges under this Agreement as set forth in an agreed Service Order. Buyer and all Users shall conduct their operations in a manner that does not interrupt, impair or interfere with the operations of the interconnecting systems at or on Seller's side of the Point of Demarcation. Buyer and Users shall not adjust, align, attempt to repair, relocate or remove Seller's equipment or facilities, except as expressly authorized by Seller. If the equipment and facilities of Buyer or any User are not compatible with a Service provided to Buyer, any special interface equipment or facilities necessary to achieve compatibility shall be the sole responsibility and expense of the Buyer. Seller's equipment shall remain the sole and exclusive property of Seller, and nothing contained herein shall give or convey to Buyer any right, title or interest whatsoever in Seller's equipment. Seller's equipment shall at all times be and remain personal property, notwithstanding that it may be or become attached to or embedded in real property. Unless authorized by the Seller, Buyer shall not, and shall cause any User not to, tamper with, remove or conceal any identifying plates, tags or labels affixed to Seller's equipment or facilities and will not cause or permit Seller's equipment or facilities to be or become encumbered by any liens, security interests or other encumbrances.

(d) Buyer and, to the extent applicable, each User shall provide Seller and its agents and contractors, at no cost to Seller or its agents or contractors, all necessary or appropriate access whenever required to provide, modify and/or cease providing the Service under this Agreement, and all necessary or appropriate space, power and environmental conditions at any applicable Point of Demarcation. Where the granting of access or right-of-way to Seller and its agents and contractors requires the consent or approval of third parties, Buyer shall obtain such consent or approval on behalf of Seller and its agents and contractors. Buyer shall be liable for any loss or damage, including theft, to Seller's equipment or facilities to the extent that such loss or damage is the result of Buyer's or any Users', employees', agents' or contractors' negligent acts or omissions, willful misconduct, or breach of the terms of this Agreement.

3. **CHARGES AND PAYMENTS.** (a) The Service Order and/or Seller's Miscellaneous Price Schedule will set forth any one-time, non-recurring charges that may be applicable to the relevant Services (The "Non-Recurring Charges"), variable usage-based charges (the "Usage Charges"), and any Recurring Charges that may be applicable to the relevant Services (collectively, the "Charges"). Buyer shall be responsible for the payment of, and shall hold Seller and its Affiliates, harmless from and against, any sales, use, excise, consumption, access, bypass, gross receipts, duty, assessment, value-added and/or other taxes, fees, charges or regulatory surcharges that may arise in any jurisdiction (collectively "taxes") which are assessed by reason of the provision, sale or use of Services by Seller to Buyer under this Agreement (other than taxes imposed on Seller's net income, capital, or net worth). Buyer shall immediately pay Seller for any all such taxes. Seller may be required to report revenues from certain purchases of Services and/or make contributions based on such revenues and/or sales to a state and/or federal Universal Service Fund ("USF") and various other local, state and federal government and/or quasi-governmental programs (collectively, the "Funding Programs"). Seller may impose one or more fees and/or

surcharges to recover from Buyer the contributions made to such Funding Programs and Seller's costs associated therewith. Buyer understands and agrees that Seller may assume such contributions to the Funding Program are applicable to the Services provided to Buyer and charge and collect such assessments unless and until Buyer provides adequate exemption documentation and/or other required proof to Seller as determined by Seller in its sole discretion. Buyer shall provide any and all relevant government tax and/or Funding Program exemption proof to Seller prior to the provision of Services. If Buyer is not able to provide such satisfactory exemption proof, or there is no applicable exemption, Seller may charge Buyer, and Buyer shall pay Seller, taxes, and surcharges as set forth above. Buyer shall comply with all Applicable Laws permitting it to collect taxes or other charges from Users and/or requiring it to make payments to Funding Programs.

(b) If the Services commence or end on a day other than the first day of a calendar month, then any Recurring Charges that are applicable for the period in which such Services commence or end shall be prorated in the proportion that the number of days the Services are provided in such month bears to the total number of days in the month. Buyer shall be liable for Charges for all of its and any Users' use of the Services, and shall be so liable whether or not it receives payment or reimbursement for the same from Users. Seller shall provide Buyer invoices for the Charges and any other amounts owed by Buyer to Seller under this Agreement. All invoices shall be sent to Buyer's billing address set forth in the Service Order. Buyer agrees to make payment under this Agreement to Seller in available funds by check or wire transfer at such location as Seller may from time to time designate in writing on the invoice or otherwise. Buyer shall pay Seller such invoices on or before thirty (30) days, in compliance with the Texas prompt payment act, after the date of the invoice for the Services provided or amounts otherwise owed under this Agreement, without deduction, setoff or delay for any reason and, if the invoiced amount is not paid when due, then a late charge on any unpaid amount shall accrue and be owed at a rate of one and one-half percent (1 ½ %) per month, not to exceed any applicable maximum lawful rate, and Buyer shall pay to Seller any court costs, reasonable attorney's fees and all other costs of collection which Seller may incur in enforcing the terms of this Agreement. If such non-payment continues after the due date of such payment, then Seller may, without notice, suspend the Services without liability and without prejudice to its right to exercise other remedies. If any overcharge or undercharge shall at any time be found and the invoice therefore has been paid, Seller shall refund the amount of any overcharge received by Seller and Buyer shall pay the amount of any undercharge within thirty (30) days after final determination thereof; provided, there shall be no retroactive adjustment of any such overcharge or undercharge if the matter is not brought to the attention of the Seller in writing within one hundred twenty (120) days following the date the Services were provided under this Agreement regarding which the overcharge or undercharge applies; provided that such adjustment period shall be adjusted to coincide with the period in which adjustments are permitted under a third party's contract or tariff, whichever is applicable, with respect to Services provided on Third Party Facilities to the extent that such contract or tariff provides for different adjustment periods than those set forth above.

(c) In order to support Buyer's payment obligations under this Agreement, Seller may perform a credit review of Buyer from time to time. Based on Seller's credit review and/or other information available to Seller (including any history of delinquent payments), Seller may require Buyer at any time to provide adequate assurances that it will pay all obligations as they become due by providing to Seller a deposit or other Performance Assurance in the form and amount requested by Seller with five (5) days of such request. Notwithstanding provisions of Applicable Law, the Seller shall have the right to comingle, invest, and use cash collateral that Seller holds as Performance Assurance, and shall not be liable to Buyer for the payment or accrual of any interest thereon. Buyer grants Seller a present and continuing security interest in and to, lien upon, and right of set-off against any and all Performance Assurance. Upon the expiration of this Agreement, any Performance Assurance held by Seller may be applied to any outstanding charges hereunder and any remainder thereof shall be returned to Buyer, or in respect of a letter of credit, to the issuer thereof upon the settlement of the account.

4. **OPERATING AND PERFORMANCE MATTERS.** The operating and performance standards for each Service shall be as set forth in the Product Supplement for the relevant Service. Seller will provide Buyer five (5) days' prior written notice of any scheduled maintenance performed by or on behalf of Seller on its facilities that, in Seller's sole opinion, has a substantial likelihood of noticeably affecting the Service. Seller will provide Buyer as much advance notice as reasonably practicable with regard to any scheduled maintenance performed on any Third Party Facilities that provides Services under this Agreement. Notwithstanding the foregoing, in the event of an emergency, Seller will have the right to perform maintenance and/or restoration of its facilities or Third Party Facilities (including, without limitation, actions required to restore continuity to a severed or partially severed fiber optic cable, restore dysfunctional power and ancillary support equipment, or correction of any potential jeopardy conditions), and Seller will notify Buyer as soon as reasonably practicable thereafter. Buyer will follow Seller's procedures and processes for reporting repair, problem and maintenance requirements

associated with the Services provided to Buyer. If, on responding to a Buyer-initiated service call, Seller determines that the cause of a Service Outage or other problem is a failure, a malfunction or the inadequacy of Buyer's equipment or facilities, then Buyer shall compensate Seller, at Seller's prevailing rates, for time and materials expended during the service call. The remedies associated with any failure or delay of Seller (a) to provide the Services in accordance with the operating and performance standards set forth in the Product Supplement for the relevant Service, (b) to maintain and operate facilities in accordance with Sections 4 and 6, and/or (c) to otherwise perform in accordance with any other obligations it may have under this Agreement or otherwise to Buyer (any failure of Seller with respect to (a), (b), or (c) above being referred to as a "Performance Failure") shall be exclusively in the form of the liquidated damages and other express remedies (the "Performance Liquidated Damages") set forth in the Product Supplement for the relevant Service. BUYER'S RIGHT TO RECEIVE SUCH PERFORMANCE LIQUIDATED DAMAGES SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S SOLE AND EXCLUSIVE OBLIGATION IN THE EVENT OF A PERFORMANCE FAILURE, EVEN IF SUCH REMEDY IS DEEMED TO FAIL ITS ESSENTIAL PURPOSE.

5. **TERM OF AGREEMENT.** (a) The term of this Agreement shall be for a period of three (3) years from the Effective Date ("Initial Term"). The term of this Agreement shall continue year to year after the Initial Term until terminated prior to the beginning of any contract year upon sixty (60) day's prior written notice by either Party delivered to the other party (with the combination of the Initial Term and any extension thereof in accordance with this Section 5(a) being referred to as the "Term"). Each Service Order placed under this Agreement shall have its own term, as indicated on such Service Order ("Service Term"). At the end of the Service Term for any Service Order, such Service Order shall continue on a year-to-year basis ("Extension Period") unless either Party gives written notice to the other that such Service Order shall not be continued, such notice to be delivered at least sixty (60) days before the end of the Service Term, or the Extension Period. Buyer's Charges, as set forth in the Service Order, for Services provided by Seller during the Service Term shall continue to apply to Buyer's Service throughout any Extension Period, unless modified by Seller on thirty (30) days' notice. If the Service Term of one or more Service Orders extends beyond the expiration or termination of this Agreement, notwithstanding the language above, then this Agreement will remain in effect as to each Service Order then in effect until the Service Terms for such Service Orders placed hereunder have expired. In no event will new Service Orders under this Agreement be permitted if the Agreement has expired or been terminated. Notwithstanding the following, the Buyer can terminate this Agreement at any time during any term upon (30) day written notice to the other party.

(b) If Buyer desires to terminate any Service after Seller's acceptance of the Service Order and prior to the expiration of the Service Term, Buyer may do so by providing notification thereof to Seller at least thirty (30) days in advance of such termination. Unless otherwise agreed by the Parties in the Service Order for such terminated Service, in the event of any such termination, an amount equal to the Termination Charge, which shall be equal to the sum of (i) any Non-Recurring Charges applicable to the terminated Service to the extent not already paid by Buyer (including any and all waived Non-Recurring Charges); (ii) the Recurring Charge and/or minimum Usage Charges applicable to the terminated Service multiplied by the number of months (or other applicable billing interval) then remaining until the end of the applicable Service Term established pursuant to the Service Order for such terminated Service, plus any applicable taxes and surcharges for contributions to Funding Programs; (iii) any termination costs payable by Seller to any Third Party associated with any portion of the applicable terminated Service being provided on any Third Party Facilities and (iv) any reasonable internal costs that are not otherwise recovered by Seller through the payment of the amounts set forth in (i) through (iii) above.

(c) A Party ("The Non-Defaulting Party") shall have the right to terminate this Agreement upon an Event of Default by the other Party (the "Defaulting Party") upon prior written notice to the Defaulting Party provided no later than the cure of any such Event of Default. The Non-Defaulting Party may, either additionally or in the alternative, elect to terminate one or more of the Services for which an Event of Default has occurred. An "Event of Default" shall be deemed to have occurred with respect to a Defaulting Party upon the occurrence of any of the following: (i) the failure by Buyer to make, when due, any payment required pursuant to the Agreement, or to provide Performance Assurance as provided in Section 3(c); (ii) the failure to perform any material covenant or obligation set forth in this Agreement (other than an Event of Default under (i), above, or any default for which the exclusive remedy is provided in Section 2 or, any other provision of this Agreement or the Product Supplement for the relevant Service), if such failure is not remedied within thirty (30) days after written notice thereof by the Non-Defaulting Party to the Defaulting Party; provided that if such default is not capable of being cured within such thirty day period with the exercise of reasonable diligence, then such cure period will be extended for an additional reasonable period of time (not to exceed ninety (90) days) so long as the Defaulting Party is exercising

reasonable diligence to cure such failure; (iii) the Defaulting Party becomes Bankrupt; (iv) Buyer merges with or into, or reorganizes, amalgamates, consolidates or enters into any other transaction in which substantially all of its assets are transferred to, another Person who fails to assume all of Buyer's obligations under this Agreement; or (v) Buyer fails to comply with the credit provisions set forth in Section 3(c). If an Event of Default with respect to Buyer occurs, in addition and without prejudice to its right to terminate as set forth above, Seller shall have the right without notice to Buyer to suspend the performance of all or part of its obligations under this Agreement for so long as such Event of Default is continuing. Upon termination of any Services and/or the Agreement under this Section 5(c), to the extent that Buyer is the Defaulting Party, Buyer shall be obligated to pay the Termination Charge and any outstanding charges for Services rendered prior to such termination and such obligations to pay shall expressly survive the termination of both the Services and this Agreement. **EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER'S RIGHT TO TERMINATE THIS AGREEMENT AS A RESULT OF AN EVENT OF DEFAULT BY SELLER SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY ASSOCIATED WITH SUCH EVENT OF DEFAULT.**

(d) If Buyer or any User has been permitted to install or furnish equipment or other property for use in connection with a Service ("Equipment") in any area owned or controlled by Seller, its Affiliates or their respective contractors or agents, and if Buyer fails to remove (or cause the User to remove) such Equipment from such area within ten (10) days after the expiration of the applicable Term or termination of the applicable Service Order, Seller may, without notice or demand and in addition to any other right or remedy available at law or equity, take possession of such Equipment, without being guilty of trespass. Seller may use all force necessary to effect such entry, to remove Buyer, to remove any person or User, or to remove any or all of Buyer's or a User's Equipment from such areas and store the same, all at Buyer's expense. Any Equipment removed may be stored in any public warehouse or elsewhere at the costs of and for the account of Buyer, and Seller shall not be responsible for the care or safekeeping thereof. Buyer expressly waives any and all claims for loss, destruction, damage, or injury, which may be occasioned by any of the aforesaid acts, and shall ensure that all Users agree to a substantially similar waiver. Any Equipment so removed will be returned to Buyer upon payment in full of all storage costs, past due license fees and Charges. If within ten (10) days following such Equipment removal, Buyer has not requested the return of its Equipment and paid any sums owed, then Seller may exercise all rights of ownership over such Equipment including the right to sell same and retain possession of sale proceeds. Seller's exercise of any remedies provided for in this section shall be without prejudice to any other remedies Seller may have provided for herein or by Applicable Law.

6. **INDEMNITIES AND LIMITATIONS OF LIABILITY.** (a) **Seller Indemnity.** Subject to the other provisions of this Agreement, Seller, on behalf of itself, its Affiliates, successors and assigns, agrees to indemnify, defend and hold harmless Buyer, its Affiliates, and their successors, assigns, officers, directors, employees, and agents, from and against any and all liabilities, losses, expenses and claims for personal injury or damage to tangible personal or real property that arise from or out of Seller's gross negligence or willful misconduct in performing its obligations under this Agreement.
- (b) **Buyer Indemnity.** Subject to the other provisions of the Agreement, Buyer, to the extent permitted by the laws of the State of Texas, if applicable, on behalf of itself, its Affiliates, successors, assigns, officers, directors, employees and agents, agrees to indemnify, defend and hold harmless Seller, and its Affiliates, and their successors, assigns, officers, directors, employees, and agents, from and against any and all liabilities, losses, expenses and claims (i) for personal injury or property damage that arise from or out of Buyer's or any User's negligence or willful misconduct, (ii) arising from or relating to the Service or any content used or transmitted by Buyer or any Users over the Services, (iii) made against Seller by any Users, or (iv) arising from or relating to Buyer's or any User's breach of any of Buyer's representations or obligations under this Agreement. The term "property" as used in this Section 6(b) shall include real, personal, tangible, and intangible property. **THE PARTIES INTEND THAT THE INDEMNITY OBLIGATIONS IN THIS SECTION 6(b) SHALL APPLY EVEN IF CAUSED, IN WHOLE OR IN PART BY THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE OR OTHER FAULT, WHETHER PASSIVE OR ACTIVE, OF SELLER, ITS AFFILIATES, SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS.**
- (c) **Damages / Causes of Action.** (i) For purposes of this Section 6(c), the term "Seller" shall be deemed to include Seller, its Affiliates, owners, directors, officers and employees, and any person or entity assisting Seller in its performance pursuant to this Agreement. (ii) **NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF SELLER TO BUYER (A) FOR BODILY INJURY OR DEATH TO ANY PERSON OR FOR DAMAGE TO ANY REAL OR TANGIBLE PROPERTY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER SHALL BE LIMITED TO BUYER'S RIGHT TO PROVEN DIRECT DAMAGES, AND (B) FOR ALL OTHER DAMAGES OTHER THAN THOSE SET**

FORTH IN SUBSECTION (A) AND NOT OTHERWISE EXCLUDED OR LIMITED BY THIS AGREEMENT, SHALL, IF SELLER IS JUDICIALLY DETERMINED TO HAVE SOME LIABILITY TO BUYER, FOR WHATEVER REASON, ARISING UNDER OR RELATED TO ACTS OR OMISSION RELATED TO THIS AGREEMENT, IN THE AGGREGATE FOR ALL SUCH ACTS OR OMISSIONS, BE LIMITED TO AN AMOUNT EQUAL TO THE RECURRING CHARGES UNDER THIS AGREEMENT FOR THE FIRST SIX (6) MONTHS OF THE TERM HEREOF (iii) NOTWITHSTANDING ANYTHING TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES SUFFERED BY BUYER OR ANY USER ARISING FROM OR RELATED TO ANY CATASTROPHIC STORMS OR FLOODS, FIRES, LIGHTNING, EARTHQUAKES OR OTHER ACTS OF GOD, WARS, CIVIL DISTURBANCES, REVOLTS, INSURRECTIONS, TERRORIST ACTIVITY, SABOTAGE, THEFT, VANDALISM, TRANSPORTATION DISASTERS, EXPLOSIONS, OR OTHER EVENT OF CASUALTY; (iv) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL BUYER OR SELLER OR THEIR RESPECTIVE AFFILIATES BE LIABLE TO EACH OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL LOSS OR DAMAGE (OTHER THAN SUCH DAMAGES AS MAY BE INCLUDED AS A COMPONENT OF LIQUIDATED DAMAGES OR TERMINATION CHARGES UNDER THIS AGREEMENT) SUFFERED BY SUCH OTHER PARTY AS A RESULT OF THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR ITS ACTS OR OMISSION RELATED TO THIS AGREEMENT WHETHER OR NOT ARISING FROM SOLE, JOINT, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, VIOLATION OF LAW, BREACH OF CONTRACT, BREACH OF INDEMNITY PROVISIONS, BREACH OF WARRANTY OR ANY OTHER THEORY OR SOURCE, WHETHER OR NOT FORESEEABLE AND EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY THEREFROM. IN ADDITION, SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT OR NETWORKS NOT PROVIDED BY SELLER; SERVICE INTERRUPTIONS OR LOST OR ALTERED MESSAGES OR TRANSMISSIONS (EXCEPT TO THE EXTENT OF SERVICE CREDIT ALLOWANCES SPECIFIED IN THE RELEVANT PRODUCT SUPPLEMENT) OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF BUYER'S OR ANY THIRD PARTY'S APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS.

(d) IN ADDITION TO THE FOREGOING LIMITATIONS ON LIABILITY, BUYER HEREBY WAIVES ANY RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41, ET SEQ., TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTING WITH AN ATTORNEY, BUYER VOLUNTARILY CONSENTS TO THIS WAIVER. BUYER EXPRESSLY AGREES, ACKNOWLEDGES, REPRESENTS, WARRANTS AND COVENANTS THAT IN CONSIDERING THIS AGREEMENT AND THIS SECTION THAT BUYER (i) HAS KNOWLEDGE AND EXPERIENCE IN THE TELECOMMUNICATIONS, DATA CENTER, AND INTERNET TRANSPORT BUSINESS AND SUCH KNOWLEDGE AND EXPERIENCE ENABLES BUYER TO EVALUATE THE MERITS AND RISKS OF ALL OF THE TRANSACTIONS, OPERATIONS AND SERVICES CONTEMPLATED BY THIS AGREEMENT, AND (ii) HAS THE ABILITY TO PROCURE SERVICE FROM OTHER PROVIDERS AND IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION RELATIVE TO SELLER, BUT THAT BUYER HAS AGREED TO THIS AGREEMENT AND SPECIFICALLY THIS SECTION IN NEGOTIATIONS INVOLVING REAL CHOICE ON THE PART OF THE BUYER.

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, each party shall bear its own costs and expenses. ANY DISPUTE BETWEEN THE PARTIES OR ARISING OUT OF THIS AGREEMENT, INCLUDING ISSUES OF ARBITRABILITY, SHALL, AT THE OPTION OF ANY PARTY, BE DETERMINED BY BINDING AND FINAL ARBITRATION BEFORE A SINGLE ARBITRATOR ADMINISTERED BY ARBITRATION SERVICE INC., ITS SUCCESSORS OR ASSIGNS, PURSUANT TO ITS ARBITRATION RULES AT WWW.ARBITRATIONSERVICESINC.COM AND THE FEDERAL ARBITRATION ACT, EXCEPT THAT NO PUNITIVE OR CONSEQUENTIAL DAMAGES MAY BE AWARDED. The arbitrator shall be bound by the terms of this Agreement and is authorized to conduct proceedings by telephone, video, submission of papers or in-person hearing. By agreeing to this arbitration provision Buyer is waiving its right to a trial before a judge or jury, waiving its right to appeal the arbitration award. Service of process or papers in any legal proceeding or arbitration between the parties may be made by

First-Class Mail delivered by the U.S. Postal Service addressed to the party's address in this Agreement or another address provided by the party in writing to the party making service. The parties submit to the jurisdiction and laws of Hidalgo County, Texas. The parties waive trial by jury in any action between them unless prohibited by law. All actions or proceedings by either party must be based on the provisions of this Agreement. Any other action that Buyer may have or bring against Seller in respect to other services rendered in connection with this Agreement shall be deemed to have merged in and be restricted to the terms and conditions of this Agreement.

(e) Limitation of Representations and Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO WARRANTY TO BUYER, OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, INFRINGEMENT, TITLE, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY SERVICE PROVIDED OR NOT PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY SELLER ARE HEREBY EXCLUDED AND DISCLAIMED.

(f) Survival and Duration. The indemnification provisions and the limitations and exclusions of liability contained in this Agreement, the obligation to pay Termination Charges, any claim for non-payment, and any other provisions of this Agreement, that by their sense and context, are intended to survive termination of this Agreement shall survive the termination of this Agreement. Claims for indemnified losses may be made so long as any claim may be made in respect of such matters under any applicable statute of limitations; provided, however, that the foregoing shall not affect any claim made in good faith prior to the date of such expiration.

7. **ENTIRE AGREEMENT AND AMENDMENT AND SEVERABILITY.** This Agreement represents the entire understanding of the Parties with respect to the subject matter of this Agreement and supersedes all previous understandings, written or oral, between the Parties with respect to the subject matter hereof. Unless provided otherwise in this Agreement, this Agreement may be amended only by a writing executed by the Parties. To the extent this Agreement is inconsistent with any other document or agreement, whether executed prior to, concurrently with or subsequent to this Agreement, the terms of this Agreement shall govern. This Agreement shall run concurrently with and shall not terminate or supersede any existing agreement between the parties unless specified herein. Should any provision of this Agreement be deemed void, the remaining parts shall be enforceable.
8. **CONFIDENTIALITY.** Any confidentiality required of Buyer herein shall not interfere with Buyer's obligation to provide information as required by the Texas Public Information Act. Each party agrees that the terms of this Agreement and all information furnished to it by the other Party which is marked or reasonably identified or identifiable as confidential or proprietary, including pricing, maps, network routes, financial terms, design information, methodologies, specifications, locations or other information to which it has access under this Agreement, are deemed the confidential and proprietary information or trade secrets (collectively referred to as "Proprietary Information") of the Disclosing Party and will remain the sole and exclusive property of the Disclosing Party (the Party furnishing the Proprietary Information referred to as the "Disclosing Party" and the other Party referred to as the "Receiving Party"). The Receiving Party will treat the Proprietary Information of the Disclosing Party and the contents of this Agreement in a confidential manner and, except to the extent necessary in connection with the performance of its obligations under this Agreement, neither Party may directly or indirectly disclose the same to anyone other than its employees, agents, consultants, potential acquirers or investors, lenders, attorneys or other advisors on a need to know basis and who agree to be bound by the terms of this Section (8), without the written consent of the Disclosing Party. The Receiving Party will use Proprietary Information only as needed for the purposes of this Agreement. Information will not be deemed Proprietary Information if it (i) becomes publicly available other than through the actions of the Receiving Party; (ii) was previously known to or is independently developed by the Receiving Party free of any obligation to keep it confidential; or (iii) becomes available to the Receiving Party without restriction from a third party whose disclosure does not violate any confidentiality obligation. If the Receiving Party is required by a governmental or judicial law, order, rule, regulation or permit to disclose Proprietary Information, it must give prompt written notice to the Disclosing Party of the requirements of such disclosure and cooperate fully with the Disclosing Party to minimize such disclosure, and disclosure after such notice shall not be a breach thereof.
9. **AUP.** Buyer and all Users shall comply with Seller's Acceptable Use Policy ("AUP"), as set forth under the AUP link at <http://www.smartcomtelephone.com/aup>, and hereby agree to the terms thereof in their entirety as amended from time to time which are hereby incorporated into this Agreement for reference.
10. **CUSTOMER PROPRIETARY NETWORK INFORMATION.** Seller is required by Applicable Law to treat confidential account, usage, call detail and billing related information about the quantity, technical configuration, type, destination, location, and amount of use of Buyer's telecommunications services ("CPNI") confidentially.

Buyer agrees that Seller may share CPNI within its business operations (e.g., broadband transport, colocation, direct internet access, IT services and broadband services divisions), and with businesses acting on Seller's behalf (but not to third parties not acting on Sellers behalf), to determine if Buyer could benefit from the wide variety of Seller products and services, and in its marketing and sales activities, Buyer may withdraw its authorization at any time by informing Seller in writing. Buyer's decision regarding Seller's use of CPNI will not affect the quality of service Seller provides Buyer. CPNI does not include Buyer's or any User's name, address, or telephone number. To the extent that Buyer is utilizing a consultant in procuring its Services from Seller, Buyer authorizes Seller to discuss its account, including CPNI, with such Buyer consultant.

- 11. COUNTERPARTS AND DRAFTING.** This Agreement has been negotiated between and jointly drafted by Seller and Buyer, and the Service Order has been executed by an authorized representative of each party.

Buyer:

By: _____

(Signature)

(Print Name)

Title: _____

Date: _____

Seller:

SMARTCOM TELEPHONE, LLC

By: _____

(Signature)

(Print Name)

Title: _____

Date: _____