

**PORT OF BEAUMONT  
ISLAND PARK TERMINAL**

**ADDENDUM NO. 1**

**FOR**

**ELECTRICAL EQUIPMENT PROCUREMENT PROJECT**

**PREPARED BY:**

**LANIER AND ASSOCIATES  
CONSULTING ENGINEERS, INC.  
595 ORLEANS ST. SUITE 600  
BEAUMONT, TX 77701**

**(409) 212-1051**

**L&A JOB NUMBER 10666-1**

**JANUARY 30, 2019**

## **ADDENDUM NO. 1**

Bids scheduled to be opened at 2:00 p.m. (CST) on <b>Tuesday, February 5, 2019.</b>
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This Addendum is hereby made a part of the project documents to the same extent as though it were originally included therein. Receipt of this Addendum must be acknowledged in the space provided below and in the space provided on the Bid Form.

### **CONTRACT DOCUMENTS**

Please be aware of the changes in the contract documents as described below:

1. Revised Information for Bidders (Section II) to reflect change in Notice of Award and payment schedule
2. Revised General Conditions (Section IV) to reflect change in payment schedule
3. Revised Exhibit J to reflect change to insurance requirements

### **CLARIFICATIONS TO GENERAL QUESTIONS**

This section of Addendum No. 1 is to provide clarifications and to respond to questions raised by contractors regarding the Bid Documents and scope of work.

Question #1: What is the best estimated date of notice to proceed?

Answer: The Notice of Award will be issued on Thursday, March 7, 2019, or thirty (30) days after the bid opening scheduled for Tuesday, February 5, 2019. As outlined in the Information for Bidders section of the contract documents (Section II), it is the successful contractor's responsibility to have the executed contract and bonds in place within ten (10) days after the Notice of Award. The Notice to Proceed will be issued immediately upon receipt of a property executed contract.

Question #2: Sub 1 LV Switchgear. Can we provide a standard bussed transformer throat connection on the right of the N3R enclosure and cable between the two throats to provide incoming power to Sub 1?

Answer: Yes, that is acceptable.

Question #3: Are NETA certified testing agencies required for NETA testing and a third party testing company not required?

Answer: Third-party NETA certified testing agency is not a requirement. Testing should be performed as stated in NETA ATS.

Question #4: On the Milestone Payment Schedule (Information for Bidders, Sheet 4 of 6) is the 10% payment based on the total cost dollar of each of the seven line items or the equipment only for each of the seven line items?

Answer: All percentages are based on the total lump sum cost of equipment and installation.

Question #5: Once the switch gear is received on site, who's insurance will be responsible for the said equipment until final commissioning?

Answer: The contractor's insurance (Builder's All Risk Coverage) has been added as a requirement and would cover the equipment until the job is complete, and then the Owner will provide insurance to cover the equipment from that point forward. An updated Exhibit "J" section of the contract documents has been included as part of this addendum to reflect this change.

Question #6: On the Milestone Payment Schedule (Information for Bidders, Sheet 4 of 6) is it possible to amend to make Shipment 60% and Installation and Commissioning 5%, and the Final Commissioning Reports, As-Build Drawing, etc. to 5%?

Answer: We are not opposed to this change. An updated Information for Bidders section (Section II) and General Conditions (Section IV) of the contract documents has been included as part of this addendum to reflect this change.

Question #7: Can the Notice of Award be reduced to (30) days in lieu of (90) days? Due to all Manufacturers pricing is only good for (30) days, if this is not acceptable then there must be a line item for escalation cost.

Answer: Based on the schedule outlined in our response to Question #1 above, the timeframe between the bid opening and Notice of Award is not expected to exceed thirty (30) days. An updated Information for Bidders section of the contract documents has been included as part of this addendum to reflect this change.

**END OF ADDENDUM NO. 1**

Please sign below and email to Bonita Perry at <mailto:bp@portofbeaumont.com> to verify you have received this Addendum. If you should have any questions please contact Kevin Jackson at (409) 212-1051.

CONTRACTOR: \_\_\_\_\_

NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

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## ADVERTISEMENT FOR BIDS

Sealed lump sum BIDS will be received by the Board of Commissioners of the Port of Beaumont Navigation District of Jefferson County, Texas at the Port of Beaumont Administrative Office, 1225 Main Street, Beaumont, Texas 77701 until 2:00 p.m. local time, Beaumont, Texas on February 5, 2019 for the Electrical Equipment Procurement Project, at which time the BIDS will be opened publicly and read aloud. BIDS received after closing time will be returned unopened.

Each BID must be submitted in a sealed envelope, addressed to Mr. Brandon Bergeron, Director of Engineering, at the Port of Beaumont, P.O. Drawer 2297, Beaumont, Texas 77704. Each sealed envelope containing a BID must be plainly marked on the outside as BID for Port of Beaumont- Island Park Terminal Electrical Equipment Procurement Project and the envelope should bear on the outside the name of the BIDDER, its address, and its contractor's license number (if applicable). If forwarded by overnight or express mail, the sealed envelope containing the BID must be enclosed in another envelope addressed to Mr. Brandon Bergeron, Port of Beaumont, 1225 Main Street, Beaumont, Texas 77701. For purposes of express mail forms, the Port's telephone number is (409) 835-5367. BIDS received by telefacsimile will not be accepted.

A pre-bid conference will be held at the Port of Beaumont Administrative Office, 1225 Main Street, Beaumont, Texas. The pre-bid conference will be held at 2:00 p.m. local time, Beaumont, Texas on January 23, 2019. ATTENDANCE AT THE PRE-BID CONFERENCE IS MANDATORY AND IS A PREREQUISITE TO A BIDDER BEING AWARDED THE BID.

Each BID must include a BID BOND (certified check, cashier's check or BIDDER'S bond), equal to five percent (5%) of the amount of the BID. BID BONDS of unsuccessful BIDDERS will be returned after award of successful bidder.

The Project includes, but is not necessarily limited to, the following items in accordance with the TECHNICAL SPECIFICATIONS and PROJECT DRAWINGS:

The CONTRACTOR shall construct, deliver and install all equipment listed below in accordance with the contract documents.

- Medium Voltage Switchgear for Substation #1
- Low Voltage Switchgear for Substation #1
- Medium Voltage Switchgear for Substation #3
- Low Voltage Switchgear for Substation #3
- Medium Voltage Load Interrupter Switch for Substation #5
- Low Voltage Switchgear for Substation #5
- Medium Voltage Load Interrupter Switch for Substation #6
- Low Voltage Switchgear for Substation #6
- Medium Voltage Load Interrupter Switch for Substation #6
- Low Voltage Switchgear for Substation #7

The BID Documents may be examined without charge at the Port of Beaumont's address

listed above during normal working hours. Copies of the BID Documents may be obtained after 8:00 a.m. local time, Beaumont, Texas, January 14, 2019, at the offices of the Port of Beaumont. BID Documents will also be available from the Port's website (<https://www.portofbeaumont.com/business-with-the-port/bids/>).

The OWNER reserves the right to reject any or all BIDS and to waive formalities in BIDDING. In case of ambiguity or lack of clearness in stating the price in any BID, the OWNER reserves the right to consider the most advantageous BID thereof, or reject the BID.



## II. INFORMATION FOR BIDDERS

BIDS will be received by Port of Beaumont Navigation District (the "OWNER"), at 1225 Main Street, Beaumont, Texas 77701 until 2:00 p.m. local time, Beaumont, Texas on February 5, 2019, and then at said office publicly opened and read aloud.

A pre-bid conference will be held at the Port of Beaumont Administrative Office, 1225 Main Street, Beaumont, Texas. The pre-bid conference will be held at 2:00 p.m. local time, Beaumont, Texas on January 23, 2019. ATTENDANCE AT THE PRE-BID CONFERENCE IS MANDATORY AND IS A PREREQUISITE TO A BIDDER BEING AWARDED THE BID.

Each BID must be submitted in a sealed envelope, addressed to Mr. Brandon Bergeron, Director of Engineering, at the Port of Beaumont, P.O. Drawer 2297, Beaumont, Texas 77704. Each sealed envelope containing a BID must be plainly marked on the outside as BID for Port of Beaumont- Island Park Terminal Electrical Equipment Procurement Project and the envelope should bear on the outside the name of the BIDDER, its address, and its license number (if applicable). BIDS received by telefacsimile will not be accepted.

BIDDERS must satisfy themselves of the extent of the WORK by examination of the site and a review of the drawings and specifications including ADDENDA. BIDDERS should pay particular attention to the Scope of Work included herein as Exhibit "A". After BIDS have been submitted, the BIDDER shall not assert that there was a misunderstanding concerning the quantities of WORK or of the nature of the WORK to be done.

BIDDERS are advised to thoroughly familiarize themselves with Part IV, General Conditions, and Part V, Special Conditions, of this Contract, in particular with Part V, Paragraph 1, Schedule, and Paragraph 4, Liquidated Damages.

All BIDS must be made on the required BID form. All blank spaces for BID prices must be filled in, in ink or typewritten, and the BID form must be fully completed and executed when submitted. A labor and equipment rental rate sheet, the Corporate Resolution (if applicable), and Bid Bond must also be fully completed and submitted with the BID form. Only one copy of the BID form is required. The BID Form is included herein as Exhibit "B". The Corporate Resolution form is included herein as Exhibit "C". The Bid Bond form is included herein as Exhibit "D". The "Information Required of Bidders" form is included herein as Exhibit "G". A complete list of all the documents required to be submitted with the BID Form is included on the BID Form.

The BIDS will be presumed to include all ADDENDA that have been provided by the OWNER or ENGINEERS to each respective BIDDER. The OWNER or ENGINEER will submit written addenda, which have been approved in writing by the OWNER to the prospective BIDDERS by email. The BIDDER's email response shall be evidence of the receipt of the addendum. If a BIDDER fails to include within his BID acknowledgement of receipt of ADDENDA that has been properly submitted and received by a prospective BIDDER, then the OWNER may treat the ADDENDA as though they had been received and treat the failure of the BIDDER to include the information concerning the ADDENDA as an informality or minor defect.

**A CONDITIONAL OR QUALIFIED BID WILL NOT BE ACCEPTED.** Any BIDDER who BIDS terms, conditions or specifications not contained within the Contract Documents, including any addendum to the BID specifications, will be considered to have submitted a conditional or qualified BID and that BID will not be accepted.

The OWNER may waive any informalities or minor defects or reject any and all BIDS. Any BID may be withdrawn prior to the above scheduled time for the opening of BIDS or authorized postponement thereof. Any BID received after the time and date specified shall not be considered. No BIDDER may withdraw a BID within 90 days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the OWNER and the BIDDER.

The CONTRACT DOCUMENTS contain the provisions required for the completion of the PROJECT. Information obtained from an officer, agent, or employee of the OWNER or any other person shall not affect the tasks or obligations assumed by the CONTRACTOR or relieve him from fulfilling any of the conditions of the contract.

Each BID must be accompanied by a BID BOND (see Exhibit "D") payable to the OWNER for five percent (5%) of the total amount of the BID. As soon as the BID prices have been compared, the OWNER will return the BONDS of all except the three lowest responsible BIDDERS. When the AGREEMENT is executed, the bonds of the two remaining unsuccessful BIDDERS will be returned. The BID BOND of the successful BIDDER will be retained until the PAYMENT BOND (see Exhibit "E") and PERFORMANCE BOND (see Exhibit "F") have been executed and approved, after which it will be returned. A certified check or cashiers check, drawn on a bank that is a member of the Federal Reserve System, may be used in lieu of a BID BOND. Sureties companies executing BID, PERFORMANCE and PAYMENT BONDS required within the Contract Documents must appear on the Treasury Department's most current circular as a company holding a Certificate of Authority as acceptable sureties on federal bonds and as acceptable reinsurance companies (the most current revision of Department Circular 570 in effect prior to the date of the submission of a BID hereunder). Such surety companies shall also be authorized to transact business in the State of Texas.

A PERFORMANCE BOND and PAYMENT BOND, each in the amount of one hundred percent (100%) of the total contract, with a corporate surety approved by the OWNER, will be required for the faithful performance of the contract.

Attorneys-in-fact who sign the BID BOND must file with the BOND a certified and effective dated copy of their power of attorney.

The OWNER will receive BIDS and verify responsiveness. The OWNER will then process and award the contract or reject the bids. If the contract is awarded, the OWNER will issue the notice to proceed. It is the intent of the OWNER to award a contract to the lowest and best bidder provided the bid has been submitted in accordance with the requirements of the bidding documents and does not exceed the funds available.

The award of the Electrical Procurement Project is contingent upon the closing and funding of the Port of Beaumont Navigation District of Jefferson County, TX Dock and Wharf Facility Revenue Bonds, Series 2019.

The OWNER expects to issue the NOTICE OF AWARD within thirty (30) days of the date specified for publicly opening BIDS.

The party to whom the contract is awarded will be required to execute and return to OWNER the AGREEMENT, INSURANCE CERTIFICATE, PERFORMANCE BOND, and PAYMENT BOND within ten (10) calendar days from the date when NOTICE OF AWARD is delivered to the BIDDER. The necessary AGREEMENT form shall accompany the NOTICE OF AWARD. In case of failure of the BIDDER to execute the AGREEMENT, the OWNER may at his option consider the BIDDER in default, in which case the BID BOND accompanying the BID shall become the property of the OWNER.

The OWNER, within ten (10) calendar days of receipt of acceptable AGREEMENT, INSURANCE CERTIFICATE, PERFORMANCE BOND, and PAYMENT BOND signed by the party to whom the AGREEMENT was awarded, shall sign the AGREEMENT and return to such party an executed duplicate of the AGREEMENT. Should the OWNER not execute the AGREEMENT within such period, the BIDDER may by WRITTEN NOTICE withdraw his signed AGREEMENT. Such notice of withdrawal shall be effective upon receipt of the notice by the OWNER.

The NOTICE TO PROCEED shall also be issued immediately upon receipt of acceptable AGREEMENT signed by the CONTRACTOR. Should there be reasons why the NOTICE TO PROCEED cannot be issued within such period, the time may be extended by mutual agreement between the OWNER and CONTRACTOR. If the NOTICE TO PROCEED has not been issued within the ten (10) calendar day period or within the period mutually agreed upon, the CONTRACTOR may terminate the AGREEMENT without further liability on the part of either party. The CONTRACTOR will complete all work outlined in the base bid within two hundred seventy-three (273) calendar days after the COMMENCE WORK DATE in the NOTICE TO PROCEED. This period includes two (2) weeks for OWNER/ENGINEER Approval Drawing review.

The BIDDER must agree to warrant all materials, equipment, and related items furnished and all work performed for a period of two years from written acceptance of the project as further described in Paragraph 52, Contractors Warranty, of Part IV, General Conditions, of this Contract.

The OWNER may make such investigations as he deems necessary to determine the ability of the BIDDER to perform the WORK, and the BIDDER shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any BID if the evidence submitted by, or investigation of, such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the obligations of the AGREEMENT and to complete the WORK contemplated herein.

In selecting the lowest responsive, responsible BIDDER, consideration will be given not only to the financial standing, but also the general competency of the BIDDER for the performance of the WORK covered by the BID and to the ability of the BIDDER to meet the project schedule.

IF THE CONTRACT IS TO BE AWARDED, IT WILL BE AWARDED TO THE LOWEST AND BEST BIDDER WHOSE EVALUATION BY OWNER INDICATES TO OWNER THAT THE AWARD WILL BE IN THE BEST INTEREST OF THE PROJECT. THE BID WILL BE AWARDED AS REQUIRED BY TEXAS WATER CODE, SECTION 60.408. By submitting a BID, each BIDDER agrees to waive any claim it has or may have against the OWNER, its ENGINEERS, the OWNER'S agents and their respective employees, arising out of or in connection with the administration, evaluation or recommendation of any BID; waiver of any requirements under the Contract Documents (as defined in the General Contract as provided in these Contract Documents and Specifications), acceptance or rejection of any BIDS and award of the Contract.

The ENGINEER (Lanier & Associates Consulting Engineers, Inc.) is under Contract to the OWNER to provide professional engineering services for this project. The ENGINEER, under the direction of a Project Manager, has prepared the design drawings and technical specifications describing the WORK. BIDDERS shall submit any questions or request for clarifications to these BID DOCUMENTS to the ENGINEER in writing. For technical information and all questions related to these BID documents contact Mr. Kevin Jackson ([kjackson@lanier-engineers.com](mailto:kjackson@lanier-engineers.com)), Project Manager for Lanier and Associates Consulting Engineers, Inc. at (409) 212-1051 and (409) 212-1541 FAX. The cut-off for BIDDER'S questions shall be 2:00 p.m. local time, Beaumont, Texas on January 28, 2019.

The ENGINEER will provide a qualified and experienced Project Representative to review the quality and quantities of WORK furnished by the CONTRACTOR. The Project Representative will examine the records and reports that are filed by the CONTRACTOR dealing with the compliance of the WORK with the drawings and specifications.

Payment shall be on a lump sum basis in accordance with the values submitted on the bid form. The OWNER will pay billing according to the following progress payment schedule:

<b>Milestone</b>	<b>Payment</b>
Order Entry	10%
Approved Submittals	20%
Shipment	60%
Installation and Commissioning	5%
Final Commissioning Reports, As-Built Drawings, etc.	5%

A CONTRACTOR'S Affidavit and Waiver of Lien shall be provided to OWNER prior to final payment, stating that all bills of every kind incurred in the performance of the WORK have been paid in full, and to furnish the OWNER a release of all claims arising out of the WORK performed under the Contract. A sample Affidavit is contained herein as Exhibit "T".

**Awarded Firm(s): Submission of FORM 1295\* (Texas Ethics Commission):**

Effective January 1, 2016, pursuant to Texas Government Code, Section 2252.908 (the "Interested Party Disclosure Act"), the Port of Beaumont may not award the Project to a bidder unless the bidder submits a Certificate of Interested Parties Form 1295 (the "Disclosure Form") to the Port of Beaumont as prescribed by the Texas Ethics Commission ("TEC"). In the event that the bidder's bid for the Project is the best bid received, the Port of Beaumont, acting through its Chief Executive Officer, will promptly notify the bidder. That notification will serve as the conditional verbal acceptance of the bid and the winning bidder must promptly file the materials described below. A sample Disclosure Form is contained herein as Exhibit "S".

**PROCESS FOR COMPLETING THE DISCLOSURE FORM:**

The Disclosure Form can be found at <https://www.ethics.state.tx.us>, and reference should be made to the following information in order to complete it: (a) item 2 – Port of Beaumont Navigation District of Jefferson County, Texas, (b) item 3—the identification number (10666-1), and (c) item 3-description of goods or services assigned to this contract by the Port of Beaumont.

The Port of Beaumont cannot accept and acknowledge your bid as the conditional winning bid unless and until you:

- (1) Complete the Disclosure Form electronically at the TEC's electronic portal; and
- (2) Print, sign, and deliver a copy of the Disclosure Form and Certification of Filing as generated by the TEC's electronic portal.

These materials must be electronically delivered to Tracy Mills with the Port of Beaumont at [tm@portofbeaumont.com](mailto:tm@portofbeaumont.com).

Time will be of the essence in submitting the form to the Port of Beaumont, and the winning bid will not be accepted by the Port of Beaumont unless a completed Disclosure Form is received on time.

Neither the Port of Beaumont nor its consultants have the ability to verify the information included in the Disclosure Form, and neither have an obligation nor undertake responsibility for

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\*Form 1295 is not required for the following contracts if entered into or amended on or after January 1, 2018: (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 contact related to health and human services if: 1. (a) the value of the contract cannot be determined at the time the contract is executed; and 2. (b) any qualified vendor is eligible for the contact; (4) a contract with a publicly traded business entity, including a wholly owned subsidiary of the business entity; (5) a contact with an electric utility, as that term is defined in Section 31.002, Utilities Code, or (6) a contract with a gas utility, as that term is defined by Section 121.001, Utilities Code.

advising bidder with respect to the proper completion of the Disclosure Form. Consequently, an entity intending to bid on the Project should consult its own advisors to the extent it deems necessary and be prepared to submit the completed form promptly upon notification from the Port of Beaumont that its bid is the conditional winning bid.

Additionally, the winning bidder must complete the House Bill 89 Verification, attached as Exhibit "Q" to this Bid Package and a Texas Government Code Chapter 2252 Certification, attached as Exhibit "R" to this Bid Package.

### III. GENERAL CONTRACT

THIS AGREEMENT between Port of Beaumont Navigation District of Jefferson County, Texas "OWNER" and \_\_\_\_\_ whose address is \_\_\_\_\_ and telephone number is \_\_\_\_\_ called "CONTRACTOR", for the performance by the CONTRACTOR of the WORK on the terms and conditions as follows:

1. **WORK TO BE PERFORMED:** CONTRACTOR agrees to perform the WORK at the price and on the terms described in the Bid Form which shall be executed, initialed or otherwise identified by the parties and attached hereto and made a part hereof, and in accordance with the Contract Documents, instructions and the other provisions thereof. Additional detail as to location may be obtained by CONTRACTOR from maps in Lanier and Associates' office. All matter descriptive of the WORK is intended to be cooperative. All matters not covered in detail shall be performed in a manner consistent with the highest standards prevailing for this type of construction.
2. **ALTERATIONS AND EXTRAS:** OWNER reserves the right during the progress of the WORK to make any changes, additions or deletions in the original plans and specifications including but not limited to the quantity of items purchased. All change orders are to be made in writing and accepted by both parties before proceeding with such WORK. Change orders shall not invalidate the Contract, PERFORMANCE BONDS, PAYMENT BONDS, insurance coverage requirements, or original plans, drawings or specifications except as amended by the change order. No bills for extras will be allowed unless ordered in writing by OWNER. CONTRACTOR shall increase the amount of the PERFORMANCE BOND and PAYMENT BONDS to such an amount as will cover any change order that increases the total Contract price to an amount in excess of that as originally awarded and must provide evidence to the OWNER that such increase in bond coverage has been secured before proceeding with the WORK.
3. **MATERIALS AND PERSONNEL:** CONTRACTOR shall furnish at its own cost constant supervision, competent foremen, and all bonds, permits, licenses, labor, tools, equipment, supplies, fuel, materials, machinery, transportation, and all other items which may be necessary in the performance and completion of the WORK. Unless otherwise specified, all materials shall be new and of a grade and quality adequate for the required use.
4. **INDEPENDENT CONTRACTOR:** In the performance of all WORK, CONTRACTOR is an independent CONTRACTOR, with sole right to supervise, manage, control and direct the performance of the details. OWNER is interested only in the results to be obtained, but the WORK must meet with the approval of the OWNER whose representatives shall be entitled to make such inspections of

the WORK and of CONTRACTOR'S records relating thereto as may be necessary to assure such results and compliance with the provisions hereof.

5. **INSURANCE AND BOND:** During the performance of the WORK hereunder, CONTRACTOR shall take out, carry and maintain, in insurance company or companies, and in policies of insurance acceptable to OWNER as specified in Exhibit "J" of these Bid Documents.
6. **RISK OF LOSS:** Until written acceptance of the WORK by OWNER all risk of loss, injury, or destruction by any cause other than acts or omissions of OWNER shall be borne by CONTRACTOR. Responsibility of CONTRACTOR shall extend to materials and equipment supplied by OWNER when delivered to CONTRACTOR.
7. **NON-ASSIGNABILITY:** This Contract or any rights hereunder shall not be transferred, assigned or sublet without the advance written approval of OWNER. Subcontracting shall not relieve CONTRACTOR of primary responsibility.
8. **SUBCONTRACTORS:** CONTRACTOR may not subcontract out more than 40 percent of the contract amount without the prior written consent of OWNER. If any subcontractor shall be employed by the CONTRACTOR, prior written notice of the employment of the subcontractor and presentation of financial information as required by OWNER shall be presented prior to the subcontractor being allowed to enter in upon the property of OWNER to provide any WORK required under this Contract.
9. **OPERATIONS:** CONTRACTOR shall commence actual operations and prosecute them diligently and without interruption to completion in a good and workmanlike manner within the period of time prescribed or if not specifically set forth within a reasonable time under the circumstances.
10. **DEFAULTS:** Time and quality of work shall be of the essence of this Contract. If CONTRACTOR fails to begin or prosecute the WORK with reasonable diligence without interruption, and in a good and workmanlike manner, OWNER, may, at its option, upon three (3) days notice in writing to CONTRACTOR, terminate the WORK. Without prejudice to any other remedy it may have, OWNER may take control of the WORK for the purpose of completing the same under the terms hereof, either by its own employees or by other independent contract.

If OWNER takes control of the WORK, CONTRACTOR shall be entitled, upon OWNER'S completion of the WORK, to the difference between the contract price and the reasonable cost and expense incurred by OWNER in finishing said WORK. If such cost and expense should exceed the contract price, CONTRACTOR or Bonding Company agrees to pay the excess to OWNER as



liquidated damages. (See also Part V, Special Conditions, Paragraph 4, Liquidated Damages, Page V-2)

The provisions of this section shall not apply to any defaults in performance of the incidental covenants of the CONTRACTOR, which are not directly related to the continuity and quality of the WORK.

11. **NOTICES:** Notices hereunder shall be sent to the respective addresses of the parties, set out above, but all communications given CONTRACTOR'S foremen on the job by OWNER'S representatives shall be sufficient, except as to matters required to be in writing by this Contract.
12. **INDEMNITY:** CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER, ENGINEER, THEIR DESIGNATED AGENTS, AND THEIR AFFILIATED COMPANIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, LIABILITIES, INTEREST, ATTORNEY'S FEES, COSTS AND EXPENSES OF WHATSOEVER KIND OR NATURE WHETHER ARISING BEFORE OR AFTER COMPLETION OF THE WORK HEREUNDER AND IN ANY MANNER DIRECTLY OR INDIRECTLY CAUSED OR OCCASIONED BY REASON OF ANY NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF CONTRACTOR, SUBCONTRACTOR OR OF ANYONE ACTING UNDER THEIR DIRECTION, CONTROL, OR ON ITS BEHALF IN CONNECTION WITH OR INCIDENT TO THE WORK PERFORMED UNDER THIS CONTRACT. IN ANY AND ALL CLAIMS AGAINST THE OWNER OR THE ENGINEER OR ANY OF THEIR AGENTS OR EMPLOYEES, BY THE EMPLOYEE OF THE CONTRACTOR, SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATIONS SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR, OR ANY SUBCONTRACTOR UNDER WORKER COMPENSATION ACTS, DISABILITY BENEFIT ACT OR OTHER EMPLOYEE BENEFIT ACTS.
13. **COMPLIANCE WITH LAW:** CONTRACTOR agrees to comply with all laws, orders, executive orders, rules or regulations of any and all local, state and federal government bodies or agencies, including without limitation those pertaining to social security, tax withholdings, sales taxes, safety, health, old age pension and unemployment compensation, all laws and regulations pertaining to wages, hours and overtime, equal employment opportunities and all others applicable to the WORK whether or not herein specifically specified. Before final settlement, CONTRACTOR shall satisfy of the payment and release of all debts, taxes, liens, claims, charges and obligations arising by operation of law, or otherwise, out of

its performance of the WORK. OWNER may withhold funds due CONTRACTOR hereunder or otherwise, without interest, to assure itself of the discharge of all such obligations, or to satisfy any provisions of law relating to claims against CONTRACTOR.

14. **REPORTING REQUIREMENT FOR BUILDING OR CONSTRUCTION PROJECTS FOR GOVERNMENTAL ENTITIES:** CONTRACTOR shall comply with the reporting requirements for building or construction projects for governmental entities as required by 28 Texas Administrative Code, Section 110.110 effective September 1, 1994, and all subsequent amendments. CONTRACTOR is responsible for obtaining the reporting requirements for Workers' Compensation Insurance coverage and shall adhere to the requirements contained within the regulations of the Texas Workers' Compensation Commission.
15. **PAYMENT:** Progress payments will be made to the CONTRACTOR on a monthly basis upon the approval of monthly invoices by the OWNER'S representative. Monthly progress payments will be subject to a 5% retainage.

Upon completion of the WORK, issuance of an ENGINEER'S completion certificate, and acceptance of the WORK by the OWNER, subject to any requirements for the maintenance of retainage, OWNER agrees to pay CONTRACTOR the total amount of the bid specified on the bid form as may be amended by appropriate change order issued by OWNER to CONTRACTOR, and subject to any liquidated damages due to OWNER.

16. **INTERPRETATION:** This Contract including the plans, specifications and instructions attached or identified separately, constitutes the entire agreement between the parties. No other conversations, BIDS, memoranda, or other matter shall vary, alter, or interpret the terms hereof. The side head captions in this instrument are for convenience of the parties in identifications of the several provisions and shall not constitute a part of the agreement nor be considered interpretive thereof. Failure of OWNER to exercise any option, right or privilege hereunder, or to demand compliance as to any obligation or covenant of CONTRACTOR or acceptance of the WORK and payment shall not constitute a waiver of any such right, privilege or option, or of the strict performance hereof, unless waiver is expressly required in such event, or is evidenced by properly executed written instrument.
17. **FORCE MAJEURE:** Neither party shall be considered in default in performance of its obligation under this Contract if delayed by Force Majeure (as described herein). Force Majeure shall include, but not be limited to hostilities, restraint of rulers or peoples, revolution, civil commotion, strike, epidemic, fire, flood, windstorm, explosion, embargo, or any law, proclamation, regulation, or ordinance of any Government, or any cause, whether of the same or different

nature, existing or future, which is beyond the control of the parties hereto. It shall be the sole responsibility of the party so affected by Force Majeure to take all reasonable steps necessary to eliminate the cause of any delay but not to the extent of assenting to unreasonable demands of the third party. Nothing herein contained shall alter or vary OWNER'S right to terminate this Contract as hereinabove provided.

18. **CORRELATION OF DOCUMENTS:** The General Contract, the following listed Contract Documents, and any addenda that appear or attached hereto, shall cumulatively be the Contract between the parties for the performance of the WORK to be completed.

The Contract Documents consists in the whole of the following:

Advertisement for Bids  
Information for Bidders  
General Contract  
General Conditions  
Special Conditions  
Scope of Work  
Bid Form  
Corporate Resolution  
Bid Bond  
Payment Bond  
Performance Bond  
Information Required of Bidders  
Wage Rates TX 180056 and Wage Rates TX180079  
Contractor's Affidavit and Waiver of Lien  
Port of Beaumont Insurance Requirements  
Technical Specifications  
Project Reference Drawings  
Separation of Materials Form  
Vendor Conflict of Interest Questionnaire  
Certified Payroll  
House Bill 89 Verification  
Chapter 2252 Certification  
Sample Certificate of Interested Parties

EXECUTED in duplicate originals this \_\_\_ day of \_\_\_\_\_, 2019.

_____	_____
(OWNER)	(CONTRACTOR)
By: _____	_____
(Signature)	(Signature)
By: _____	_____
(Printed Name)	(Printed Name)
Title: _____	_____
(Printed)	(Printed)
Attested: _____	_____
(Signature)	(Signature)
Attested: _____	_____
(Printed Name)	(Printed Name)
Title: _____	_____
(Printed)	(Printed)

#### IV. GENERAL CONDITIONS

1. Definitions

- A. The Contract Documents consist of documents as stated on page III-5.
- B. The Owner is Port of Beaumont Navigation District of Jefferson County, Texas.
- C. Whenever the word "Owner" or "Company" is used it shall be understood to refer to the Owner identified as such in this agreement.
- D. The word "Engineer" shall mean Lanier & Associates Consulting Engineers, Inc., 595 Orleans St. Suite 600, Beaumont, Texas 77701, Telephone (409) 212-1051. Wherever the words Construction Manager, Project Representative, or Owner's Representative are used, it refers to a person designated by the Engineer.
- E. The word "Contractor" or "Manufacturer" or the expressions "Party of the Second Part" or "Second Party" shall mean the person, persons, partnership, company, or corporation entering into this Contract for the performance of the work required by it.
- F. The words "Surety" or "Sureties" shall mean the surety company or the bondsmen or party or parties who have made secure the fulfillment of this Contract by a Bond, and whose signatures are attached to said Bond.
- G. The word "Proposal" shall mean the offer of the Contractor to do the work contemplated under this Contract at the price or prices set forth therein.
- H. The word "Drawings" shall mean, collectively, all the drawings attached to the Contract Documents or listed in the Specifications, and such supplementary drawings as the Engineer may issue from time to time in order to elucidate said Drawings, to show details, which are not shown thereon, or to cover changes in the work.
- I. The words "Contract Price" shall mean the total of all payments, which are to be paid to the Contractor for the work to be done under this Contract (estimated in the case of unit price or cost plus work).
- J. The term Subcontractor as employed herein includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the Drawings or Specifications of this work, but does not include one who merely furnishes material not so worked.

- K. Written Notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.
- L. The term Work of the Contractor or Subcontractor includes labor or materials or both, equipment, transportation, or other facilities necessary to complete the Contract.
- M. All Time Limits stated in the Contract Documents are of the essence of the Contract.
- N. The laws of Texas shall govern the construction of the Contract.
- O. Wherever in this Contract the words Directed, Required, Permitted, Ordered, Designated, Prescribed, or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription, etc. of the Engineer or Owner is intended. Similarly, the words Approved, Considered, Necessary, Acceptable, Satisfactory, or words of like import, shall mean approved or considered necessary by, or acceptable or satisfactory to the Engineer or Owner unless another meaning is plainly intended.
- P. Where reference is made in these specifications to specifications compiled by other agencies, organizations or departments, such reference is made for expediency and standardization and such specifications referred to are hereby made a part of these specifications.
- Q. Certificate of coverage ("certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
- R. Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
- S. Persons providing services on the project - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors,

leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity, which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

2. Time and Order of Completion

- A. The Contractor agrees that the work shall be commenced and carried on at such points, and in the order of precedence, and at such times and seasons as may be directed by the Owner in accordance with the Schedule for the completion of the work as outlined in the Special Conditions. The Contractor declares that he is familiar with the site and rights of way, with all the local conditions, and with all the circumstances, which may or are likely to affect the performance and completion of the work, and that such conditions have been allowed for in the preparation of Contractor's Bid.
- B. The Owner shall have the right to require the discontinuance of the work, in whole or in part, for such time as may be necessary, should the condition of the weather or of flood or other contingencies make it desirable so to do, in order that the work shall be well and properly executed. Extension of time shall be granted the Contractor for discontinuance of work so required.

3. Inspection and Right of Access

- A. The Owner and Engineer contemplate and the contractor hereby agrees to a thorough, minute inspection by the Owner and Engineer, or by any of their agents, of all work and material furnished under this Contract.
- B. The Contractor shall furnish to the Owner and Engineer or to any of their agents, access at all times to the work and to the premises used by the Contractor, and shall provide them every reasonable facility for the purpose of inspection, even to the extent of discontinuing portions of the work temporarily, or of uncovering or taking down portions of finished work.
- C. When finished work is taken down for the purpose of inspection, the Contractor shall bear the entire expense incident thereto in the event that the said work is found to be defective. The Owner shall pay the cost incident thereto in the event that the work exposed is found to be in accordance with the Specifications and Drawings. In the latter case, the uncovering or taking out of materials or parts shall be paid for by the Owner on the basis of actual direct cost of materials, labor and incidental expense, plus reasonable rental prices for transportation equipment and heavy equipment. No percentage

for the Contractor's fee shall be added to actual direct cost of material, labor and incidental expense or equipment rental prices. Where the work exposed is found to be in accordance with the Specifications and Drawings, the cost of replacing the covering or the making good of any of the parts removed shall be paid for by the Owner on the basis of prices set forth in the Proposal in the case of unit price work or on the basis of actual cost of materials, labor and incidental expense and equipment rentals as set forth in the two preceding sentences in all other cases. If the Contractor shall fail to replace any defective work or materials after reasonable notice, the Engineer may cause such defective work or materials to be replaced and the expense thereof shall be deducted from the amount to be paid the Contractor.

4. To Remedy Defective Work

- A. If the work or any portion thereof shall be damaged in any way, excepting by the acts of the Owner or the Engineer, or if defects not readily detected by the proper inspection shall develop before the final completion and acceptance of the whole work, the Contractor shall forthwith remedy without compensation, such damage or defects in a manner satisfactory to the Engineer.
- B. Neither the Engineer, nor any of his assistants or agents shall have any power to waive any of the obligations of the Contractor or any of the obligations of this Contract for the furnishing by the Contractor of suitable material and for the Contractor's performing work to the Owner's satisfaction as herein described
- C. The Owner shall have the right to direct the manner in which all work under this Contract shall be conducted insofar as may be necessary to secure the safe and proper progress and the specified quality of the work. All work shall be done and all material shall be furnished to the satisfaction and approval of the Owner.
- D. Whenever, in the opinion of the Owner, the Contractor has made marked departures from the schedule of completion laid down in the Proposal or when unforeseen circumstances force a departure from the said schedule, the Owner, in order to assure the carrying out of the schedule and the completion of the work in accordance with the Contract, shall direct the order and method of conducting the work.
- E. Additional drawings and explanations to exhibit or illustrate details may be provided by the Engineer and shall be so provided whenever necessary, and if consistent with the Drawings and Specifications shall be binding upon the Contractor and the Owner. The written decision of the Engineer as to the



true construction and meaning of the Drawings and Specifications and of such additional drawings and explanations shall be binding upon the Contractor and the Owner.

5. To Order Modifications of Methods and Equipment

- A. If at any time the Contractor's methods, materials, or equipment appear to the Owner to be unsafe, inefficient or inadequate for securing the safety of the workmen or the public, the quality of work or the rate of progress required, he may order the Contractor to increase their safety, efficiency and adequacy, and the Contractor shall comply with such orders. If, at any time, the Contractor's working force and equipment, in the opinion of the Owner, shall be inadequate for securing the necessary progress, as herein stipulated, the Contractor shall, if so directed, increase the working force and equipment to such an extent as to give reasonable assurance of compliance with the schedule of completion. The failure of the Owner to make such demands shall not relieve the Contractor of its obligation to secure the quality, the safe conduct, and the rate of progress of the work required by the Contract, and the Contractor alone shall be and remain liable and responsible for the safety, efficiency and adequacy of its methods, materials, working force and equipment, irrespective of whether or not the Contractor makes any change as a result of any order or orders received from the Engineer.

6. Lines and Grades

- A. The Owner will establish a baseline and bench mark adjacent to the work of this contract. All such marks and stakes must be carefully preserved by the Contractor, and in case of their unnecessary destruction by the Contractor or any of its employees, they will be replaced at the Contractor's expense.
- B. The Contractor shall perform all layout work, unless otherwise noted.
- C. The Contractor shall be responsible for the accuracy of all dimensions within the various sections of the work according to the figured dimensions on the Drawings.

7. To Define Terms and Explain Plans

- A. The various parts of the Contract are intended to be complementary to each other, but should any discrepancy appear, or any misunderstanding arise as to the import of anything contained therein, the decision and explanation of the Owner shall be final and binding. The correction of any errors or omissions of the Drawings and Specifications may be made by the

Engineer, when such correction is necessary to a reasonable interpretation of the Drawings and Specifications as a whole.

- B. Whenever, in the Specifications or on the Drawings which are a part of this Contract or which may be furnished to the Contractor for directing his work, the terms or descriptions of various qualities of workmanship, material, structures, processes, plant, or other features of the Contract are described in general terms, the meaning or fulfillment of which must depend upon individual judgment, the question of the fulfillment of such specifications or requirements shall be decided by the Engineer, and said material shall be furnished, said work shall be done, and said structure, process, plant or feature shall be constructed, furnished or carried on in full and complete accordance with the Engineer's interpretation of the same and to his full satisfaction and approval, provided such interpretation is not in direct conflict with the Drawings and Specifications.
- C. Matters shown either on the Drawings or in the Specifications shall be done and furnished as if shown in both except where expressly excepted either in the Specifications or on the Drawings. Figured dimensions shall in all cases be taken in preference to scale measurements, and detailed drawings consistent with general drawings in preference to general drawings of the same part of the work.

8. Contractor's Function

- A. The Contractor shall furnish and provide all material, labor, supervision, tools, plant, apparatus, conveyances, false-work, scaffolding, cribbing, rigging, water, air, steam, electrical energy, equipment, and incidental expense for accomplishing the work covered by this Contract, except the materials and services specifically provided in the Specifications to be furnished by the Owner.
- B. The Contractor shall receive, unload and check the materials furnished by the Owner, and furnish the Engineer with lists or tally sheets for the materials received. Materials received in damaged condition shall be laid aside for inspection by the Owner and representatives of the common carrier. The Contractor shall pay all demurrage charges on cars containing materials furnished by the Owner to the Contractor under this Contract, if such demurrage is the result of negligence or bad management on the part of the Contractor in unloading said cars. The Contractor shall pay for all damage to such cars as a result of unloading. In the case of materials being supplied for cost plus work, said payment for demurrage due to negligence or for damage to cars shall not in any way be billed to the Owner, nor shall any fee be paid on such payments.

- C. After the Contractor has accepted materials, equipment, and services furnished by the Owner as being in good condition and correct quantity at time of delivery, the Contractor shall be responsible for their safety from loss or damage of any nature until the finished structures and/or surplus materials are accounted for and accepted by the Owner. Contractor will take appropriate steps to protect the work under construction from damage by the elements or otherwise.

9. Materials, Appliances, Employees

- A. Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities necessary for the execution and completion of the work.
- B. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.
- C. All materials delivered to the job site shall be so stored and handled as to preclude the inclusion of any foreign substance or the causing of any discoloration therein and to prevent any damage thereto from the weather or the ground.
- D. All work as described or required shall be executed in a neat, skillful, workmanlike manner, in accordance with the best recognized trade practice. Only competent workmen who satisfactorily perform their duties shall be employed on the work.
- E. The Contractor shall comply with all local ordinances and State laws regarding labor and mechanics in effect at the time of signing of this Contract or passed during construction of the work. The Contractor shall include in his bid and pay all Federal and State taxes or assessments on labor.

10. Construction Schedule

- A. Prior to beginning construction operations, the Contractor shall prepare a construction time schedule and secure written approval of same from Engineer.
- B. The Contractor shall continuously prosecute the work with such diligence as may be necessary for him to maintain the time schedule and complete the work within the specified time limit.

11. Cutting, Patching, and Owner's Facilities

- A. The Contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work or other contractors shown or implied by the drawings and specifications for the completed structure, and he shall make good after them as the Engineer may direct.
- B. The Contractor shall not endanger any work by cutting, digging or otherwise and shall not cut or alter the work of any contractor, save with the consent of the Engineer.
- C. Further, the Contractor shall provide sufficient allowances in his bid to allow for the normal operation of the Owner's facilities. The Owner shall attempt to schedule shipments, movements, and operation of his facility so as to allow the Contractor to proceed with his work during regular work hours. If Owner's operations require cooperation of the Contractor in a manner apparent to the Contractor at the project outset this cooperation shall be provided at no additional cost to the Owner.

12. Contractor's Address and Notices

- A. Both the address appearing in the Proposal and Contractor's office at or near the site of the work are hereby designated as places to either of which notices, letters or other communications to the Contractor shall be mailed or delivered. The delivery at either of the above named places or depositing in a postage paid wrapper directed thereto, in any post office box regularly maintained by the post office, of any notice, letter or other communication to the Contractor, shall be deemed sufficient notice or service thereof upon the Contractor, and the date of such notice or service shall be the date of such delivery or depositing. The first named address may be changed at any time by an instrument in writing executed and acknowledged by the Contractor and delivered to the Owner. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter or other communication upon the Contractor personally.

13. Personal Attention of Contractor

- A. The Contractor shall give constant personal attention to the faithful prosecution of the work, and shall be present either in person or by a duly authorized representative on the site of the work, continually during its progress. The Contractor shall maintain an office on or adjacent to the site of the work, and shall at all times keep in said office a complete copy of the Specifications and Drawings. In the event that the Contractor is a company or a corporation or a partnership then this paragraph shall be interpreted to

mean the attention of an officer of this company or corporation or member of the partnership.

14. Contractor Informed as to Conditions

- A. The Contractor states that all the available records have been examined; that a field examination of the site and right of way has been conducted; and that the subsurface water conditions to be encountered, the character of equipment and facilities needed for the prosecution of the work, the location, and suitability of all construction materials, the quantities in the various sections of the work, the local labor conditions and all other matters in connection with the work and services to be performed under this Contract have been thoroughly studied.
- B. Any records of subsurface condition, water records or other observations that may have been made by the Engineer or the Owner have been made with reasonable care and accuracy. Such records may be made available to the Contractor for its information, but there is no expressed or implied guarantee as to accuracy of the records nor any interpretation of them contained therein. The Contractor recognizes this limitation and stipulates that its opinions and interpretations regarding the character of materials to be excavated have been derived from an inspection of the ground and studies of available soil records.
- C. The Contractor further states that the price or prices contained in the Proposal are based on its own knowledge and judgment of the conditions and hazards involved and not upon any representation of the Owner or the Engineer.

15. Subcontracts

- A. As soon as practicable and before awarding any sub-contracts, the Contractor shall notify the Engineer in writing of the names of the subcontractors proposed for the principal parts of the work, and for such other parts as the Engineer may direct, and shall not employ any to whom the Engineer may have an objection.
- B. The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by him, as he is for the acts and omissions of persons directly employed by him. The Contractor shall be responsible for the coordination of the trades, subcontractors, and material men engaged upon his work.

- C. The Owner and Engineer will not undertake to settle any differences between the Contractor and his subcontractors or between subcontractors.
- D. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the Specifications and other Contract Documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating subcontract that the Owner may exercise over the Contractor under any provisions of the Contract Documents.

16. Collateral Work

- A. The Owner and the Engineer reserve the right to have such other contractors or agents as they may elect to enter upon the property or location upon which the works herein contemplated are being constructed, for the purpose of constructing or installing such collateral works the Owner and the Engineer may desire. Such collateral work will be constructed or installed with as little hindrance or interference as possible with the Contractor.
- B. The Contractor shall work in harmony with other contractors or agents employed by the Owner, and the Owner shall arbitrate any difference of opinion between contractors.

17. Coordination with other Contractors

- A. If any part of the work depends for proper execution or results upon the work of any other contractor, the Contractor shall cooperate with such other contractors, obtain information from them and give information to them as they require and shall inspect and promptly report in writing to the Engineer any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure so to inspect and report shall constitute an acceptance of the other contractor's work, except as to defects which may develop in the other contractor's work after the execution of the Contractor's work.

18. Mutual Responsibility of Contractors

- A. The Contractors agree that if, by any negligent act or omission or by defective or ill-timed work or by its failure to perform any of its obligations under the Contract, damage is caused to another contractor, the Contractor will pay to the Owner for the account of such other contractor the amount of damages determined by the Engineer to be due the other contractor. The Contractor further agrees that if damage is so caused to itself by another, the Contractor will accept in satisfaction thereof the amount so determined by the Engineer to be due, provided in either case that such other contractor is

bound to the Owner by similar stipulations. This Article shall not be construed to cover damages for personal injuries, including death.

- B. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor, who shall defend such proceedings at his own expense and, if any judgment against the Owner arise therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Owner.

19. Contractor Responsible for Claims

- A. Contractor shall indemnify, defend and hold harmless Owner, Engineer, their designated agents, and their affiliated companies, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature whether arising before or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of contractor, or of anyone acting under its direction, control, or on its behalf in connection with or incident to the work performed under this contract.
- B. In the event that any arrangement is made whereby employees of the Owner are used by Contractor, they shall, while engaged on this work, be considered for all purposes as employees, servants and agents of the Contractor and not of the Owner, irrespective of who pays them.

20. Insurance Requirements

- A. Insurance requirements are detailed in Exhibit "J" of this document.
- B. If Contractor uses a chartered water borne vessel in the operations hereunder, Charterer's Legal Liability Insurance, including full Collision and Tower's Liability, covering bodily injury and property damage with a combined single limit of at least \$1,000,000 or the value of the vessel, whichever is greater; or, if Contractor uses an owned water borne vessel, Hull and Machinery Insurance, including full Collision and Tower's Liability, and Protection and Indemnity Insurance covering bodily injury and property damage, each with a combined single limit of at least \$1,000,000 or the value of the vessel, whichever is greater.
- C. Physical damage insurance maintained by Contractor for loss of or damage to equipment and machinery used in the performance of work set forth in this Contract, including loss or damage during loading, unloading and while in transit, shall, name Owner as an Additional Insured. Contractor agrees to

waive and agrees to have his insurers waive any rights of subrogation as respects deductibles under such policies and as respects damages to equipment, including the loss of use thereof, whether insured or not.

21. Indemnity

CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER, ENGINEER, THEIR DESIGNATED AGENTS, AND THEIR AFFILIATED COMPANIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, LIABILITIES, INTEREST, ATTORNEY'S FEES, COSTS AND EXPENSES OF WHATSOEVER KIND OR NATURE WHETHER ARISING BEFORE OR AFTER COMPLETION OF THE WORK HEREUNDER AND IN ANY MANNER DIRECTLY OR INDIRECTLY CAUSED OR OCCASIONED BY REASON OF ANY NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF CONTRACTOR, SUBCONTRACTOR OR OF ANYONE ACTING UNDER ITS DIRECTION, CONTROL, OR ON ITS BEHALF IN CONNECTION WITH OR INCIDENT TO THE WORK PERFORMED UNDER THIS CONTRACT. IN ANY AND ALL CLAIMS AGAINST THE OWNER OR THE ENGINEER OR ANY OF THEIR AGENTS OR EMPLOYEES, BY THE EMPLOYEE OF THE CONTRACTOR, SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATIONS SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR, OR ANY SUBCONTRACTOR UNDER WORKER COMPENSATION ACTS, DISABILITY BENEFIT ACT OR OTHER EMPLOYEE BENEFIT ACTS.

22. Contractor's Responsibility for Safety

- A. Contractor agrees that with respect to his furnishing the materials, equipment, and labor under this Contract, all work performed by Contractor shall be in accordance with all applicable federal, state, local occupational safety laws and regulations.
- B. Contractor will follow all site specific safety rules including, but not limited to, those pertaining to hot work, confined space entry, lock out / tag out, and work permits.
- C. Contractor will provide a project specific safety plan to the Owners representative at the time of mobilization.



- D. Contractor shall promptly report to Owner all accidents occurring to Contractor's employees or any other parties or property.

23. Performance and Payment Bonds

- A. If required, the Contractor must deliver to the Owner an executed Performance Bond and Payment Bond in an amount at least equal to the total amount of the contract sum as security for the faithful performance of this Contract.
- B. The sureties of all bonds shall be such surety company or companies as are approved by the Owner. The Owner prior to execution of the formal Contract must approve these bonds.
- C. Should the Contractor's surety, even though approved and accepted by the Owner, subsequently become insolvent, bankrupt, or otherwise fail, the Contractor shall furnish a new bond or bonds, in another company approved by the Owner, without additional cost to the Owner. The new bond or bonds shall be executed under the same terms and conditions as the original bond or bonds.

24. Work Performed at Contractor's Risk

- A. The Contractor shall take all precautions necessary and shall be responsible for the safety of the work and shall maintain all lights, guards, signs, temporary passages, or other protection necessary for that purpose. All work shall be done at the Contractor's risk, and if any loss or damage shall result from fire or from other cause, the Contractor shall promptly repair or replace such loss or damage free from all expense to the Owner. The Contractor shall be responsible for any loss or damage to material, tools or other articles used or held for use in connection with the work. The work shall be carried on to completion without damage to any work or property of the Owner or of others and without interference with the operation of existing machinery or equipment.

25. Infringement of Patents and Royalties

- A. The Contractor shall assume all liability and fully indemnify and save harmless the Owner, their successors or assigns, from and against all claims, suits, proceedings, damages, losses, expenses, fees, and royalties, arising from any infringement, real or claimed, of any patent on any article, machine, manufacture, structure, composition, arrangement, improvement, design, device, methods or process embodied or used in the performance of this Contract. The Owner, its successors and assigns, will give written

notice of all such claims and patent infringement suits or proceedings instituted against it to the Contractor, who shall defend same, and will give the Contractor authority, assistance and all available information to enable the Contractor to do so.

26. Removal of Equipment or Materials

- A. The Contractor shall not sell, assign, mortgage, hypothecate, or remove equipment or materials which have been installed or which may be necessary for the completion of the Contract, without the written consent of the Owner.

27. Assignment of Contract

- A. The Contractor agrees that he shall not assign this Contract or any portion thereof to any person, persons, partnership, company or corporation not satisfactory to the Owner and the Contractor shall not make such an assignment until he has received the written permission of the Owner, provided that if the Contract is bonded the Contractor shall furnish the Owner with a written statement of the Surety consenting to such assignment and agreeing that it will not affect the Surety's obligation under the Bond. No such assignment, even though thus consented to, shall relieve the Contractor from its liability under this Contract for the performance and completion of the work by the time and in the manner herein contracted for.

28. Suspension of Work if Contract is Violated

- A. If the work to be done under this Contract shall be abandoned by the Contractor, or if this Contract shall be assigned or the work sublet by the Contractor without the permission of the Owner, or if the Contractor be placed in bankruptcy, or if a Receiver be appointed for its properties, or if the Contractor shall make an assignment for the benefit of creditors, or if at any time the Owner shall be of the opinion that the necessary progress of work is not being maintained, or that the Contractor is violating any of the conditions or agreements of this Contract, or is executing said Contract in bad faith or not in accordance with the terms thereof, the Owner may, without prejudice to any other right or remedy, notify the Contractor to discontinue all work under this Contract by written notice to be served upon the Contractor, a copy of which shall be given to the Surety. Within one week from the date of such notice, the Contractor shall discontinue the work, whereupon the Surety may, at its option, assume this Contract and proceed to perform the same. The Surety, in such event, shall take the Contractor's place in all respects and shall be paid by the Owner for all work performed by the Surety in accordance with the terms of this Contract. In case the Surety does not, within two days after the date of the Owner's

notice to the Contractor to discontinue work, exercise its right or option to assume this Contract, then the Owner shall have the power to complete the work herein described by contract or otherwise, as it may determine, and the Contractor agrees that the Owner shall have the right to take possession of and use any of the materials, plants, tools, equipment, supplies and property of any and every kind provided by the Contractor for the purpose of this work. The expense of so completing the work shall be charged to the Contractor and the expense so charged shall be deducted by the Owner out of such moneys as may be due or may at any time thereafter become due to the Contractor. In case such expense is more than the sum which would otherwise have been payable under the Contract, then the Contractor shall pay the amount of such excess to the Owner upon notice from the Owner of the excess so due. The Owner shall not be required to obtain the lowest figures for the work of completing the Contract but may make such expenditures as in its sole judgment shall best accomplish such completion.

29. Delays

- A. If the completion of the work is delayed by any act or neglect of the Owner or the Engineer, or by changes ordered in the work, or by related work, or by fire, unavoidable casualties and other causes beyond the Contractor's control, which in any such case the Owner shall determine to justify the delay, the Contractor shall not be responsible therefore, provided it files a written claim with the Owner within seven days after the cause of delay. Failure to furnish drawings shall not be deemed a valid excuse for delay until two weeks after written demand has been made therefore. An extension of time equivalent to any delay coming within this Article shall be granted Contractor and such extension shall not operate to release the Surety from any of its obligations.
- B. No such extension shall be made for delay occurring more than seven (7) days before claim therefore in writing to the Owner.

30. Indebtedness and Liens

- A. The Contractor agrees to furnish the Owner, from time to time during the progress of the work as requested, verified statements showing the Contractor's total outstanding indebtedness in connection with the work covered by the Contract. Before final payment is made, the Owner may require the Contractor to furnish the Owner with satisfactory proof that there are not outstanding debts or liens in connection with the Contract. If during the progress of the work, the Contractor shall allow any indebtedness to accrue to subcontractors or others, and shall fail to pay or discharge same within five (5) days after demand, then the Owner may withhold any money

due the Contractor until such indebtedness is paid, or apply same toward the discharge thereof.

31. Permits, Licenses and Regulations

- A. Permits, licenses and easements for permanent structures or permanent changes in existing structures shall be secured by the Owner without expense to the Contractor unless otherwise specified.
- B. The Contractor shall obtain all other necessary permits, certificates and licenses, give all necessary notices, pay all legal fees and comply with all Federal, State and Local or Municipal laws, ordinances, rules and regulations in carrying on the work, including, without limiting the generality of the foregoing, those relating to the preservation of public health and safety, sanitation, the storage and use of explosives, safety appliances, electric apparatus and wiring and hours of labor. The Contractor shall deliver to the Engineer certified copies of said permits, certificates and licenses and receipts for all legal fees.
- C. If the Drawings and Specifications are a variance with any Federal, State, Local or Municipal laws, ordinances, rules or regulations, the Contractor shall notify the Engineer in writing and, except in an emergency endangering life or property, shall not proceed with the work affected thereby until authorized by written notice from the Engineer. If any of the work shall be done contrary to such laws, ordinances, rules or regulations, the Contractor shall bear all expense arising therefrom.

32. Taxes

- A. The Contractor shall pay, by the date they fall due, all Social Security taxes and use or sales taxes and other taxes and fees due and payable to the United States of America or to any state or political subdivision thereof, in connection with the work under this Contract, including any taxes assessed on the remuneration paid to employees or on materials purchased and/or used. The Contractor shall make all payroll deductions required by law and shall hold the Owner harmless from any liability on account of any such taxes, fees, or withholdings.

33. Lands for Construction Purposes

- A. The Contractor may have the use of lands, for rights-of-way purposes, which are contiguous to the work, which are either now owned by the Owner or to be secured by it, and which are not necessary for the Owner's business or the prosecution of collateral work.

- B. All other lands or the use of lands necessary or deemed desirable for the Contractor's operations shall be furnished by the Contractor at its cost. All costs for damages to property, crops, etc. caused by the Contractor's ingress or egress to the Owner's right-of-way shall be borne solely by the Contractor.

34. Requirements for Contractor's Employees

- A. The Contractor's cars and trucks, and those of its employees, shall be parked in areas expressly set aside and designated as parking areas.
- B. Contractor's employees shall be provided with identification buttons showing employees payroll number and Contractor's name. Employees shall be required to wear these buttons where plainly visible to Owner's watchmen and inspectors. Employees failing to do this shall, upon request of the Engineer, be removed from the work. Contractor's employment records shall include any reasonable information as may be required by the Owner.

35. Character of Employees

- A. The Contractor shall immediately remove from the work, whenever requested to do so by the Owner, any person considered by the Owner to be incompetent, disposed to be disorderly, or by his actions or language proves to be offensive to the Owner, Engineer, their designated representatives, or to subcontractors and fellow employees, or otherwise unsatisfactory and undesirable. Such person shall not again be employed on the work without the consent of the Owner.

36. Superintendence and Supervision

- A. The Contractor shall keep on the job, during its progress, competent superintendent and any necessary assistants, all satisfactory to the Owner. The superintendent must be able to speak English. The superintendent shall not be changed except with the consent of the Owner, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request in each case. The Owner shall not be responsible for the acts or omissions of the superintendent or his assistants.

37. Workmen to be Used

- A. Attention is called to the fact that certain portions of this project call for workmen skilled not only in their trade but specialized in the particular task required. The Contractor shall provide that such work shall be done by workmen who are skilled and have specialized in the work to which they are assigned.

38. Night Work

- A. Night work may be required if necessary in emergencies or to complete work on which night work is feasible, but no night work of any kind shall be done without the knowledge and consent of the Engineer.
- B. Where night work is in progress, sufficient light shall be provided by the Contractor to safeguard the workmen and the public and to afford adequate facilities for properly placing and inspecting the materials.

39. Camps and Sanitary Conveniences

- A. The Contractor shall, if necessary, provide suitable facilities for the feeding, and sanitary necessities of the men. Such facilities shall provide an amount and arrangement of space per man that will be suitable for the maintenance of cleanliness, decency and health as may be required by law. Facilities for the sanitary necessities of all persons employed on the work shall be constructed in suitable locations designated by the Engineer and shall be maintained in a clean and sanitary manner.
- B. Garbage and refuse of all sorts shall be promptly and satisfactorily removed.
- C. The Contractor shall so operate its camp as to maintain order at all times and so that conduct, appearance, and atmosphere of the construction shall be a credit to the owner.

40. Intoxicants

- A. The Contractor shall not permit or suffer the introduction or use of alcoholic beverages of any type or any intoxicants, non-prescription stimulants or drugs upon the works embraced in this Contract, or anywhere in the Owner's facilities. Any violator shall be immediately dismissed from his employ.

41. Protection of Highways and Railroads

- A. The Contractor shall protect public roads and bridges which may be damaged by, interfered with, or given undue wear by reason of the work done under this Contract, and shall repair or replace them if damaged, at its own expense, to the satisfaction of the governmental authorities or the owners thereof.
- B. The Contractor shall, unless otherwise specifically provided for, make suitable arrangements with governmental authorities and railroads for the construction of all structures underneath roads and railroads or on railroad rights-of-way to the end that the public using the highways and movement of trains shall be safe-guarded from accident and/or delay.
- C. Where questions arise as to safe methods or suitable protection the Contractor shall confer with the Engineer, but responsibility for results shall rest with the Contractor.

42. Use of Explosives

- A. Explosives shall be used only when expressly permitted in writing by the Owner and then in a manner which will not disturb or endanger the stability, safety or quality of the work. Explosives shall be stored, handled and used as prescribed by the laws and regulations of the United States and the State and political subdivisions thereof in which the work is performed. Special attention must be given to the immediate disposal of paper wrappings from explosives, which are poisonous to livestock.

43. Cleaning Up

- A. The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by his employees or work, and at the completion of the work he shall remove all his rubbish from and about the building and all his tools, scaffolding and surplus materials and leave his work "broom-clean" or its equivalent, unless more exactly specified. In case of dispute the Owner may remove the rubbish and charge the cost to the several contractors as the Engineer shall determine to be just. Contractor shall submit his plan for disposal of waste material to Engineer for his review and concurrence prior to any disposal of waste materials.
- B. As part of the work included in this Contract, the Contractor shall completely remove and satisfactorily dispose of all temporary works to the extent directed. The Contractor shall tear down and dispose of all temporary buildings; shall remove or grade, to the extent directed, all embankments or cofferdams made for construction purposes, shall

satisfactorily fill excavations as directed; shall remove all plant and equipment; shall satisfactorily dispose of all rubbish resulting from the operations under this Contract and shall do all work necessary to restore the territory embraced within the site of the Contractor's operations to at least as good order and conditions as at the beginning of the work under this Contract.

- C. In no case during or after construction shall any form of rubbish, waste, or debris be dumped or allowed to fall into the river.

44. Protection of Work and Property

- A. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner, or due to causes beyond the Contractor's control and not to his fault or negligence. He shall adequately protect adjacent property as provided by law and the Contract Documents.
- B. The work may be located in the vicinity of existing gas, telephone, sewer, water, and /or electrical lines. The contractor shall identify existing utilities prior to beginning work and shall handle his work in a manner so as not to damage the existing utilities. He shall repair or pay for any repairs for damage done to existing utilities.
- C. The Contractor shall take all necessary precaution for the safety of employees on the work, and shall comply with all applicable provisions of Federal, State, and County safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. He shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features as protruding nails, scaffolding, window openings, stairways and falling materials, and he shall designate a responsible member of his organization on the job site, whose duty shall be the prevention of accidents. The name and position of any person so designated shall be reported to the Engineer by the Contractor.
- D. In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor, without special instruction or authorization from the Engineer or Owner, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury, and he shall so act, without appeal,



if on account of emergency work, shall be determined by agreement or arbitration.

45. Independent Contractor

- A. The Contractor agrees to perform this Contract as an independent Contractor and not as a Subcontractor, agent or employee of the Owner.

46. Compliance with Price Regulation

- A. The Contractor agrees that material sold or installed and service rendered or work done shall comply with all applicable governmental price regulations or orders. The Contractor agrees to deliver to Owner such proof of affirmation of compliance with such regulations or orders as may be provided for in any such regulations or orders.

47. Accounting and Records

- A. The Contractor shall keep accurate records and books of accounts showing the detailed cost of all items of labor, materials, equipment, supplies, services, and charges of every kind procured or used under the provision of the Contract. The Contractor agrees to give the Owner access at any time to all books, accounts, and records in connection with this Contract as the Owner may request.
- B. If the Owner so desires, it shall have the right to place competent employees of its own in any position of accounting, time-keeping, or checking, provided that such employees shall perform their respective duties in accordance with the Contractor's plans for handling the work, and in cooperation with the Contractor's employees.

48. Changes in the Work

- A. If it becomes necessary or desirable to modify this Contract and the Specifications herein contained and the Drawings, in a manner not materially affecting the substance thereof, or to make changes by altering, adding to or deducting from the work, or to be done under this Contract, the Owner may, without invalidating the Contract, by an order in writing, order such damages to be made; and the changes shall be made accordingly, provided that in cases where such changes increase the cost of the work and payment therefore is not covered by the prices bid for the various items, the Contractor shall be remunerated under a supplemental contract as hereinafter provided; and in case they shall diminish the cost of the work proper, deduction from the Contract Price shall be made. All such work shall be executed under the conditions of the original contract except that

any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

- B. Except for minor modifications in the work not involving extra cost and not inconsistent with the purposes of the work, and except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order from the Owner authorizing the extra work or change; and no claim for an addition to the Contract Price shall be valid unless so ordered. Changes involving an increase in the work will be ordered by the Owner in the form of written Additional Work Orders in which the consideration will be set forth. All such work shall be executed under the provisions and conditions of the original Contract and of the Bond accompanying it.
- C. The value of any such additional work shall be determined in one or more of the following ways:
  - 1. By estimate and acceptance in lump sum
  - 2. By unit Prices stated in the Contract or subsequently agreed upon
  - 3. On the basis of cost plus a percentage fee stated in the Contract or subsequently agreed upon
  - 4. On the basis of cost plus fixed fee stated in the Contract or subsequently agreed upon

49. Claims for Extra Cost

- A. If the Contractor claims that any instructions by Drawings or otherwise involve extra cost under this Contract, he shall give the Engineer written notice thereof within a reasonable time after the receipt of such instructions, and in any event before proceeding to execute the work, except in emergency endangering life or property, and the procedure shall then be as provided for changes in the work. No such claim shall be valid unless so made.

50. Payment

- A. Payment shall be on a lump sum basis in accordance with the values submitted on the bid form. The OWNER will pay billing according to the following progress payment schedule:

<b>Milestone</b>	<b>Payment</b>
Order Entry	10%
Approved Submittals	20%
Shipment	60%
Installation and Commissioning	5%
Final Commissioning Reports, As-Built Drawings, etc.	5%

- B. Once the contractor has made application for payment as above, the Owner or Owner's Engineer shall, not later than the date when the payment falls due, issue a Certificate for Payment to the Contractor for such amount as he decides to be properly due, or state in writing his reasons for withholding a certificate.
- C. No Certificate issued nor payment made to the Contractor, nor partial or entire use or occupancy of the work by the Owner, shall be an acceptance of any work or materials not in accordance with this Contract. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, other than those arising from the unsettled liens, from faulty work appearing after final payment or from failure to comply with Drawings and Specifications and the terms of any special guarantees specified in the Contract and of all claims by the Contractor, except those previously made and still unsettled.
- D. Final payment by the Owner shall constitute a waiver of all claims by the Owner except those arising from:
1. Unsettled liens
  2. Faulty or defective work discovered after completion
  3. Failure of the work to comply with the Contract Documents
  4. Special guarantee terms required by Contract Documents
- E. The acceptance of payment shall constitute a waiver of all claims by the Contractor against the Owner, the Engineer, their associates, or designated agents except those previously made in writing and still unsettled.

- F. Contractor shall submit an “All Bids Paid Affidavit” upon completion of the project and prior to final payment.
- G. The final payment, including retainage withholdings, will be made only upon receipt of proof of no recorded liens or privileges against the work and receipt of notarized release of all claims by Contractor as above described.

51. Testing and Acceptance

- A. Acceptance of all work shall be based on the satisfactory results of a testing program outlined to insure compliance with the specifications. The Engineer shall determine the type tests and the frequency of the tests. The results of all tests will be made available to the Contractor, but interpretation of results and acceptance shall be the responsibility of Engineer.

52. Contractor’s Warranty

- A. The Contractor shall warrant all materials, equipment, and related items furnished and all work performed for a period of two years from the date of written acceptance of the work.
- B. During the period of warranty any defects in equipment, materials, or workmanship shall be promptly corrected by the Contractor without cost to the Owner. The Owner shall give notice to the Contractor of any observed defects with reasonable promptness. If written notice is given before the end of the two year warranty period, the warranty will be honored notwithstanding what period of time is required to correct the defect.
- C. The warranty hereby given by Contractor as to materials, equipment and related items furnished and all work performed shall be in addition to and warranties given by manufacturers, fabricators, supplies or dealers as to any material, equipment or related items.

53. Certificates of Inspection and Warranties

- A. Upon completion and before acceptance of the work, the Contractor will furnish the Owner with a Certificate of Inspection issued by the proper authority to the effect that the installation is in full conformity with all governing Local and State requirements. Deliver to the Owner all equipment warranties.

54. Occupational Safety & Health Act of 1970

- A. Contractor shall observe and comply with: all safety and health standards promulgated by the Secretary of Labor under Section 107 of the Contract Work Hours and Standards Act, published in 29 CFR Part 1926 and adopted by the Secretary of Labor as occupational safety and health standards under the Williams-Steiger Occupational Safety and Health Act of 1970; any and all other state and local occupational safety laws and regulations. Such safety and health standards shall apply to all subcontractors and their employees as well as to the Contractor and its employees. Contractor shall be responsible for initiating; maintaining; supervising; and inspections safety programs, safety systems, and safety precautions in connection with the Work.

55. Drawings and Specifications on the Job Site

- A. The Contractor shall keep one copy of all drawings and specifications on the job site, in good order, available to the Engineer and to his representative.
- B. All drawings, specifications and copies thereof furnished by the Owner are his property. They are not to be used on other work and, with the exception of the signed Contract set, are to be returned to him on request, at the completion of the work.
- C. The Contractor will be furnished, free of charge, all copies of drawings and specifications reasonably necessary for the execution of the work.
- D. The Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in his own work or in that of any other Contractor, four (4) copies, checked and approved by him, of all shop or installation drawings and schedules required for the work of the various trades. The Engineer shall check and review, with reasonable promptness, such schedules and drawings only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. The Contractor shall make any corrections required by the Engineer, file with him two (2) corrected copies and furnish such other copies as may be needed. The Engineer's review of such drawings or schedules shall not relieve the Contractor from responsibility for deviations from drawings or specifications, unless he has, in writing, called the Engineer's attention to such deviations at the time of submission, and secured his written comments, nor shall it relieve him from responsibility for errors in shop drawings or schedules.

**EXHIBIT "J"**

**PORT OF BEAUMONT INSURANCE REQUIREMENTS**

**I. GENERAL PROVISIONS**

Before commencing work under this contract, the Contractor shall obtain insurance to cover claims which may arise from the Contractor's operations, including operations by any Subcontractors. Contractor shall maintain such insurance until the completion of work.

Such insurance shall be furnished by companies licensed to do business in Texas, rated "A" or better by Best's, and (or) approved by the Port.

Prior to beginning work, the Contractor shall furnish to the Port of Beaumont, a Certificate of Insurance verifying coverage, limits and provisions outlined below. The insurance shown below is the minimum coverage to be provided. Contractor should carry additional insurance which he deems appropriate.

- A. Worker's Compensation Insurance:
- |                      |                                  |
|----------------------|----------------------------------|
| Limits - Statutory   |                                  |
| Employers Liability: | \$500,000. Each Accident         |
|                      | \$500,000. Disease-Policy Limit  |
|                      | \$500,000. Disease-Each Employee |

U.S. Longshoremen's & Harbor Workers' (U.S.L.& H.) Coverage Endorsement will be required for this project.

If any of the work is performed on any type of Vessel, Maritime Coverage must be provided.

(See attached "Port of Beaumont - Additional Insurance Requirements" for a detailed statement of the complete requirements for Workers' Compensation Insurance coverage.)

- B. General Liability
- |                                     |              |
|-------------------------------------|--------------|
| Limits of Insurance -               |              |
| General Aggregate Limit             | \$2,000,000. |
| Prods/Compl. Ops. - Agg.            | \$2,000,000. |
| Personal & Advertising Injury Limit | \$1,000,000. |
| Each Occurrence Limit               | \$1,000,000. |
| Fire Damage Limit                   | \$ 50,000.   |
| Medical Expense Limit               | \$ 5,000.    |

Policy must be written on an "occurrence" policy on ISO 1986 form or provide equivalent coverage. If policy is other than on ISO 1986 form, it must be on "occurrence" form and provide the following coverage which are so indicated on Certificate of Insurance.

- 1 - Operations Liability
- 2 - Products and/or Completed Operations Coverage
- 3 - Blanket X, C, U Coverage
- 4 - Broad Form Blanket Contractual Coverage
- 5 - Broad Form Property Damage
- 6 - Broad Form General Liability Endorsement

- C. Automobile Insurance: Must insure all owned, non-owned and hired autos.  
Limits - \$500,000. CSL or  
\$250,000/\$500,000/\$100,000

- D. Umbrella Liability Coverage:  
Limits - \$2,000,000. Each Occurrence  
\$2,000,000. Aggregate

This policy must follow form for underlying coverage without limitations or exclusions.

- E. Owners and Contractors Protective Liability:  
The Contractor shall furnish to the Port of Beaumont, an Owners & Contractors Protective Liability Policy naming both the Owner and the Engineer as Insureds.  
Limits - \$1,000,000. Occurrence  
\$2,000,000. Aggregate

## II. OTHER PROVISIONS

- A. Additional Insured - Contractor shall provide endorsements on General Liability, Automobile and Umbrella Liability policies naming Port of Beaumont as an additional insured.
- B. Waiver of Subrogation - Contractor shall provide endorsements in favor of Port of Beaumont on Worker's Compensation, General Liability, Automobile, and Umbrella policies. Must be noted on Certificate of Insurance in force.
- C. Notice of Cancellation - The Contractor shall maintain such insurance in force during the life of the Contract and no modification or change of insurance shall be made without thirty (30) days written advance notice to the Port.
- D. Builder's All Risk Coverage will be required for this project.

- E. The Port of Beaumont reserves the right to require Contractor to submit a complete copy of each insurance policy in addition to the required Certificate of Insurance. The Port of Beaumont may require copies of the policies to be submitted prior to acceptance of the Certificate of Insurance to verify compliance or at any time after award of the contract as may be required to resolve any questions concerning insurance coverage that may arise.



**EXHIBIT J - ATTACHMENT**

**PORT OF BEAUMONT - ADDITIONAL INSURANCE REQUIREMENTS**

**WORKERS' COMPENSATION INSURANCE COVERAGE**

A. Definitions:

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

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

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

- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

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

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

- on the contractor's current certificate of coverage ends during the duration of the project;
- (4) obtain from each person providing services on a project, and provide to the governmental entity:
    - (a) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
    - (b) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shows on the current certificate of coverage ends during the duration of the project;
  - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
  - (7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the commission on the sample notice, without any additional words or changes:

**REQUIRED WORKERS' COMPENSATION COVERAGE**

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."