# Supplemental General conditions

## Section 00810

***THIS SECTION MUST BE EDITED BY PROJECT MANAGER TO MEET SPECIFIC PROJECT NEEDS.*** *Delete this and all other instruction boxes prior to final printing.*

The Supplemental General Conditions contained herein amend or supplement the General Conditions, Section 00700.

**ARTICLE 1 – DEFINITIONS**

*Include the following modification of 1.20 in all Contracts.*

*Add to the following definition:*

2

**1.20** Engineer/Architect (E/A): The OWNER’s design professional for this contract is:

*Name:*

 *Address:*

*If appropriate to the Project, include the following paragraph 1.55; otherwise delete (renumber as needed).*

*Add the following definition*:

**1.55** Commissioning Authority or Agent - A consultant retained by the OWNER charged with supporting E/A in monitoring the Work for conformance with the Contract Documents, and with assisting in the facility's start-up and testing as a member of the commissioning team.

*If the Project uses Allowances, include the following paragraph 1.56 (renumber as needed); otherwise delete.*

*Add the following definition:*

**1.56** Allowance - Allowance is defined as "a not-to-be-exceeded amount”, either individually or in the aggregate, which is established between the Owner and the Contractor as part of its Bid Proposal when the precise scope of a particular line item(s) has not been defined to a level which is adequate for the Contractor to provide a definitive line item pricing for that particular scope of Work. The use of any Allowances by the Contractor will be subject to the Owner’s sole approval and it is the Owner’s intent to minimize the use of Allowances to the fullest extent possible. For any Allowances which the Owner allows the Contractor to use, the following rules shall apply: (i)Allowances shall cover the cost to the Contractor of the Cost of Work; (ii) Contractor’s overhead and profit associated with the stated Allowance shall be included in the Allowance; and (iii) upon completion of the portion of the Work subject to an Allowance, the Contract Amount for that portion of the Work will be adjusted based upon the approved actual cost of the Work, which will not exceed the approved aggregate amount of the Allowances.

*If desired for Lump Sum Contracts, include one of the following revisions of 2.4.2.6; delete the one(s) not used.*

* 1. **Before Starting Construction:**

*Delete 2.4.2.6 and replace with the following (changes to the original text are identified by underlining)*:

 **.6** A preliminary schedule of values for all of the Work, subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. At a minimum, the schedule of values must be broken out by trade and split between materials and labor. Prices will be deemed to include an appropriate amount of overhead and profit applicable to each item of Work;

***OR***

**2.4 Before Starting Construction:**

*Delete 2.4.2.6 and replace with the following (changes to the original text are identified by underlining)*:

 **.6** A preliminary schedule of values for all of the Work. This schedule of values must be organized by Subcontractor, with each item of Work to be performed by that Subcontractor broken out under the Subcontractor’s name, and subdivided in sufficient detail to serve as the basis for progress payments during construction. At a minimum, each trade must be split between materials and labor. Prices will be deemed to include an appropriate amount of overhead and profit applicable to each item of Work;

*If project is a City of Kyle facilities project (treatment plants, pump station, reservoir, or lift station), include the following revision of 2.4.2.6; otherwise delete.*

**2.4 Before Starting Construction:**

*Delete 2.4.2.6 and replace with the following (changes to the original text are identified by underlining)*:

 **.6** A preliminary schedule of values for all of the Work, subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. At a minimum, the schedule of values must be broken out by trade and by the Equipment list as shown in the plans. Prices will be deemed to include an appropriate amount of overhead and profit applicable to each item of Work;

**ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

*If Project receives Federal funding, include the following paragraph 3.1.3; otherwise delete.*

**3.1 Intent:** *Add the following*:

**3.1.3** Federal Aid - Assurances: To the extent that federal funding has been provided for this Contract, the federal contracting provisions set forth in Section 00810A are made a part of the Contract Documents for all purposes. The provisions of Section 00810A are intended to supplement and will supersede and be controlling over the City’s standard 00700 General Conditions and other Contract Document provisions to the extent of any conflict with Section 00810A. The Contractor/Bidder acknowledges and agrees that Contractor/Bidder has the obligation to comply with the attached federal-aid assurances and contract provisions. This Section 3.1.3 will constitute the Contractor’s/Bidder’s accepted proposal and agreement with respect to the attached federal-aid assurances and contract provisions.

In the event of any ambiguity or inconsistency between the Section 00810A federal aid assurances and the Contract Documents, the federal provision will control to the extent consistent with the overall intent of the Project. If the Contractor/Bidder has any question as to the applicability of a Section 00700 or Section 00810A provision, the Contractor/Bidder shall submit a request for information to the Owner. The Owner will have three (3) business days in which to respond.

**ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS**

*Include the following revision of 4.1 in Contracts for building projects:*

**4.1 Availability of Lands:** *Add the following to the end of the paragraph*:

CONTRACTOR shall contact OWNER’s Public Works Department to obtain a Temporary Use of Right-of-Way Permit prior to beginning construction on any sidewalk/driveway or occupying any parking area/meters within the public right-of-ways.

*If necessary, include the following modification to paragraph 4.1; otherwise delete.*

*Pay particular interest if special provisions require “additional insured”. See companion edit in 5.3.1.1.4.*

**4.1 Availability of Lands:** *Add the following as a second paragraph to 4.1*:

Field Notes and Special Provisions to Easements, where applicable, are attached to Section 00810. All Work associated with Special Provisions to Easements shall be subsidiary to the entire Bid, unless otherwise specified. Should the actions of the CONTRACTOR, or its Subcontractors, Vendors, or Suppliers, cause the Work to be delayed to the point that the ending date of an easement has been exceeded, the CONTRACTOR shall be responsible to reimburse the OWNER for any additional costs required to extend the period of rights to the easement in order to complete the Work. This delay shall be considered to be any period of time required by the CONTRACTOR to fully and satisfactorily execute the Work that is in addition to the original Contract duration, as modified by any executed Contract change orders.

**ARTICLE 5 - BONDS AND INSURANCE**

**5.3 Other Bond and Insurance Requirements:**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| ***Project Manager to use the following table to determine which of the insurance paragraphs are applicable to the Project. Edit out the table and associated legend from the final document.******If work is within 50 feet of a railroad, check with the railroad for any special insurance requirements.******DEFINITIONS:****Governmental (Govmtl.) Functions - Projects for all departments**LEGEND:*

|  |  |  |
| --- | --- | --- |
|  | ** | *Applicable Insurance Requirements.* |
|  |  |  |
|  |  | *Insurance Requirements Not Applicable, Which Should Be Edited Out.* |
|  |  |  |
|  | *As Req'd* | *Determine Whether Insurance Provisions Are Applicable.* |

|  |
| --- |
|  |
| *Paragraph* | *Govmtl. Functions* | *Govmtl.**Functions**w/Haz. Material* |  |
| *5.3.1 - Contractor**Provided Insurance* | ** | ** |  |
| *5.3.1.1 & all subpar. - General Reqmnts.* | ** | ** |  |
| *5.3.1.2 - Auto. Liab.* | ** | ** |  |
|  *.1* | ** |  |  |
|  *.2* |  | ** |  |
|  *.3* |  |  |  |
| *5.3.1.3 - Workers'**Comp. & Emp. Liab.* | ** | ** |  |
|  *.1* | ** | ** |  |
|  *.2* |  |  |  |
| *5.3.1.4 - Gen. Liab.* | ** | ** |  |
|  *.1* | ** |  |  |
|  *.2* |  | ** |  |
|  *.3* |  |  |  |
| *5.3.1.5 - Bldrs. Risk* | *As Req'd* | *As Req'd* |  |
|  | *Traditional Projects* |  |
| *Paragraph* | *Govmtl. Functions* | *Govmtl.**Functions**w/Haz. Material* |  |
| *5.3.1.6 - Haz. Mat.* |  | ** |  |
|  *.1* |  | ** |  |
|  *.2* |  | ** |  |
|  *.3* |  | ** |  |
| *5.3.1.7 – Prof. Liab.* | ** | ** |  |

 |

**5.3.1** CONTRACTOR Provided Insurance

*Include the following text in 5.3 for all projects.*

**5.3.1.1** General Requirements.

 **.1** CONTRACTOR shall carry insurance in the types and amounts indicated below for the duration of the Contract, which shall include items owned by OWNER in the care, custody and control of CONTRACTOR prior to and during construction and warranty period.

 **.2** CONTRACTOR must complete and forward the Certificate of Insurance, Section 00650, to OWNER before the Contract is executed as verification of coverage required below. CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by OWNER. Approval of insurance by OWNER shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR. CONTRACTOR must also complete and forward the Certificate of Insurance, Section 00650, to OWNER whenever a previously identified policy period has expired as verification of continuing coverage.

 **.3** CONTRACTOR's insurance coverage is to be written by companies authorized to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.

 **.4** All endorsements naming the OWNER as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: Project Manager, City of Kyle City Hall, 100 W. Center Street, Kyle, TX 78640.

*If special provisions for easements require an additional insured (in addition to OWNER), insert the following 5.3.1.1.4.1; otherwise delete.*

 **.1** In addition to the OWNER, **<insert name of other party(ies)>** shall be added as an additional insured.

 **.5** The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both OWNER and CONTRACTOR, shall be considered primary coverage as applicable.

 **.6** If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

 **.7** OWNER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

 **.8** OWNER reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by OWNER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.

 **.9** CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

 **.10** CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

 **.11** CONTRACTOR shall provide OWNER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

 **.12** If OWNER owned property is being transported or stored off-site by CONTRACTOR, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.

 **.13** The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

*Include the following 5.3.1.2 in all contracts,* ***except for*** *projects within 50 ft of a railroad (see below). Delete this option if the second option applies.*

**5.3.1.2** Business Automobile Liability Insurance. Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of OWNER:

a) Waiver of Subrogation endorsement CA 0444;

b) 30 day Notice of Cancellation endorsement CA 0244; and

c) Additional Insured endorsement CA 2048.

Provide coverage in the following types and amounts:

*For projects involving "governmental functions"* ***without*** *hazardous materials, use the following option. If not applicable, delete this option and refer to the next option.*

 **.1** A minimum combined single limit of $500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are $250,000 bodily injury per person, $500,000 bodily injury per occurrence and at least $100,000 property damage liability each accident.

*For projects involving "governmental functions"* ***with*** *hazardous materials, and projects involving "proprietary functions” (coordinate amount with Risk Management), use the following option. If not applicable, delete in its entirety.*

*Delete all “<>”.*

 **.1** A minimum combined single limit of $<1,000,000 minimum> per occurrence for bodily injury and property damage.

*For projects within 50 feet of a railroad, or as required by the railroad, include the following revised paragraph 5.3.1.2 and 5.3.1.2.1*

**5.3.1.2** Business Automobile Liability Insurance. Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of OWNER:

a) Waiver of Subrogation endorsement CA 0444;

b) 30 day Notice of Cancellation endorsement CA 0244; and

c) Additional Insured endorsement CA 2048.

Provide coverage in the following types and amounts:

 **.1** A minimum combined single limit of $2,000,000 per occurrence for bodily injury and property damage.

*Include the following this 5.3.1.3 in all contracts* ***except for*** *projects within 50 ft of a railroad (see below). Delete this option if the second option applies.*

**5.3.1.3** Workers' Compensation And Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401). CONTRACTOR shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, Section 00650, must be presented as evidence of coverage for CONTRACTOR. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in favor of OWNER:

a) Waiver of Subrogation, form WC 420304; and

b) 30 day Notice of Cancellation, form WC 420601.

The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

*For projects involving "governmental functions" with or without hazardous material, include the following to the optional section selected above.*

 **.1** $100,000 bodily injury per accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee.

*For projects* ***within*** *50 feet of a railroad, or as required by the railroad, use this entire 5.3.1.3 section. Delete the entire section if not applicable.*

**5.3.1.3** Workers' Compensation And Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401). CONTRACTOR shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, Section 00650, must be presented as evidence of coverage for CONTRACTOR. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in favor of OWNER:

a) Waiver of Subrogation, form WC 420304; and

b) 30 day Notice of Cancellation, form WC 420601.

The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

 **.1** $1,000,000 bodily injury per accident, $1,000,000 bodily injury by disease policy limit and $1,000,000 bodily injury by disease each employee.

*Include the following 5.3.1.4 in all contracts, except for projects within 50 feet of railroad (see below).*

**5.3.1.4** Commercial General Liability Insurance. The Policy shall contain the following provisions:

a) Contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project.

b) Completed Operations/Products Liability for the duration of the warranty period.

c) Explosion, Collapse and Underground (X, C & U) coverage.

d) Independent Contractors coverage (Contractors/ Subcontractors work).

e) Aggregate limits of insurance per project, endorsement CG 2503.

f) OWNER listed as an additional insured, endorsements CG 2010 and CG 2037 or equivalent.

g) 30 day notice of cancellation in favor of OWNER, endorsement CG 0205.

h) Waiver of Transfer of Recovery Against Others in favor of OWNER, endorsement CG 2404.

Provide coverages A&B with minimum limits as follows:

*For projects involving "governmental functions" without hazardous materials use the following.*

 **.1** A combined bodily injury and property damage limit of $500,000 per occurrence.

*For projects involving "governmental functions" with hazardous materials, and projects involving "proprietary functions", coordinate amount with Risk Management. If not applicable, delete in its entirety.*

*Delete “<>"*

 **.1** A combined bodily injury and property damage limit of $<1,000,000 minimum> per occurrence.

*For projects* ***within*** *50 feet of a railroad, or as required by the railroad, use this entire 5.3.1.4 section. Delete the entire section if not applicable.*

**5.3.1.4** Commercial General Liability Insurance. The Policy shall contain the following provisions:

a) Blanket contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project.

b) Broad form property damage.

c) Completed Operations/Products Liability for the duration of the warranty period.

d) Explosion, Collapse and Underground (X, C & U) coverage.

e) Independent Contractors coverage.

f) Aggregate limits of insurance per project, endorsement CG 2503.

g) OWNER listed as an additional insured, endorsements CG 2010 and CG 2037 or equivalent.

h) 30 day notice of cancellation in favor of OWNER, endorsement CG 0205.

i) Waiver of Transfer of Recovery Against Others in favor of OWNER, endorsement CG 2404.

Provide coverages A&B with minimum limits as follows:

 **.1** A combined bodily injury and property damage limit of $2,000,000 minimum per occurrence and $4,000,000 minimum aggregate.

*For building, utility plant, tunneling, bridge and lift station projects, include the following Builders’ Risk Insurance provisions.*

**5.3.1.5** Builders' Risk Insurance. CONTRACTOR shall maintain Builders' Risk Insurance or Installation Insurance on an all risk physical loss form in the Contract Amount. Coverage shall continue until the Work is accepted by OWNER. OWNER shall be a loss payee on the policy. If off-site storage is permitted, coverage shall include transit and storage in an amount sufficient to protect property being transported or stored.

*For projects which include lead abatement instead of asbestos abatement, substitute "lead" for "asbestos" in the following paragraphs. For projects which include lead and asbestos abatement, change the following paragraphs to read "lead and asbestos." If no lead or asbestos delete in its entirety.*

**5.3.1.6** Hazardous Materials Insurance.

For Work which involves asbestos or any hazardous materials or pollution defined as asbestos, CONTRACTOR or Subcontractor responsible for the Work shall comply with the following insurance requirements in addition to those specified above:

 **.1** Provide an asbestos abatement endorsement to the Commercial General Liability policy with minimum bodily injury and property damage limits of $1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of $1,000,000. This policy shall not exclude asbestos or any hazardous materials or pollution defined as asbestos, and shall provide "occurrence" coverage without a sunset clause. The policy shall provide 30 day Notice of Cancellation and Waiver of Subrogation endorsements in favor of OWNER.

 **.2** CONTRACTOR or Subcontractor responsible for transporting asbestos or any hazardous materials defined as asbestos shall provide pollution coverage. Federal law requires interstate or intrastate transporters of asbestos to provide an MCS 90 endorsement with a $5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a $1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of $1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of asbestos. The endorsement shall, at a minimum, provide a $1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

 **.3** CONTRACTOR shall submit complete copies of the policy providing pollution liability coverage to OWNER.

*Include the following 5.3.1.7 in all contracts. Renumber as necessary.*

**5.3.1.7** Professional Liability Insurance. For Work which requires professional engineering or professional survey services to meet the requirements of the Contract, including but not limited to excavation safety systems, traffic control plans, and construction surveying, the CONTRACTOR or Subcontractors, responsible for performing the professional services shall provide Professional Liability Insurance with a minimum limit of $500,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed with respect to all professional services provided in due course of the Work of this Contract. CONTRACTOR's policy shall include the following endorsement in favor of the OWNER:

a) 30 day Notice of Cancellation endorsement CA 0244

*For projects within 50 feet of a railroad, or as required by the railroad, include the following Railroad Property Liability insurance provisions. Also be sure to make companion edits in 5.3.1.2., 5.3.1.3 and 5.3.1.4 above.*

*Insert the following paragraph*:

**5.3.1.8** Railroad Protective Liability insurance with broad form coverage, with Railroad Owner listed as an additional named insured, with coverage as follows:

 **.1** Minimum combined single limit of $2,000,000 per occurrence for bodily injury and property damages and a minimum of $6,000,000 aggregate.

*If necessary, edit the payment percentages in paragraph 5.4.2.2 and 5.4.2.3 to meet specific project needs; otherwise delete if standard language in the 00700 is acceptable.*

**5.4.2** Performance Bond.

 **.2** If the Contract Amount exceeds $100,000, CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out in Section 00610, unless the original Contract Time is 60 Calendar Days/40 Working Days or less, in which case CONTRACTOR can agree to the following terms and conditions for payment in lieu of providing a Performance Bond: no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER; CONTRACTOR shall be entitled to receive <95%> of the Contract Amount following Final Completion, and the remaining <5%> of the Contract Amount following the one year warranty period.

 **.3** If the Contract Amount is less than or equal to $100,000, CONTRACTOR will not be required to furnish a Performance Bond; provided that no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER under the following terms and conditions: CONTRACTOR shall be entitled to receive <95%> of the Contract Amount following Final Completion, and the remaining <5%> of the Contract Amount following the one year warranty period.

**ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

*For Federal DBE projects, include the following modification of 6.4.7; otherwise delete.*

**6.4 Concerning Subcontractors, Suppliers and Others:** *Delete 6.4.7 and replace with the following*:

**6.4.7** CONTRACTOR shall pay each Subcontractor under this Contract for satisfactory performance of its contract no later than ten (10) Calendar Days from the CONTRACTOR’s receipt of payment from OWNER. CONTRACTOR shall not withhold retainage payments from any Subcontractor. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from OWNER. This clause applies to both DBE and non-DBE Subcontractors.

On a monthly completion of the Work, provide certified payment records to OWNER.

*If needed, include the following modification of 6.5; otherwise delete.*

**6.5 Patent Fees and Royalties:** *Add the following*:

*Insert any Project specific information on license fees and royalties.*

*Include the following modification of 6.6 in all Contracts.*

**6.6 Permits, Fees:** *Add the following*:

OWNER will obtain and pay for the following permits, licenses and/or fees:

*Add to or delete from the following list to meet Project requirements.*

 **6.6.1** Site Development Permit.

 **6.6.2** Building Permit(s). OWNER's responsibility for obtaining and paying for the Building Permit(s) shall be limited to the following where applicable: the required Electrical Service (Aid of Construction) Fee, Water and Wastewater Tap Fees, Water and Wastewater Capital Recovery Fees, and Septic Permit Fee. The OWNER’s responsibility for obtaining and paying for the Building Permit(s) excludes securing and paying for the following where applicable: Driveway Permit (Concrete) Fee, Electrical Permit, Mechanical Permit, Plumbing Permit, Water Engineering Inspection Fee, Temporary Use of Right-of Way Permit, the gas company’s Gas Yard Line Contribution Fee, and any other permits/fees not listed above.

 **6.6.3** Texas Department of Transportation permit for Work in State rights-of-way.

 **6.6.4** Railroad Utility License Agreement.

*6.7.4 Option 1: If Project will have an aggregate disturbed area of soil at least 1 acre but less than 5 acres, include the following paragraph 6.7.4, and appropriate subparagraphs as described below. If there is any other Project specific information, (e.g. Federal regulations connected to funding), insert it in 6.7.4. If neither of these conditions applies, delete the following 6.7.4 and all of its subparagraphs.*

*See Option 2 below if the Project site is 5 acres or more.*

*Option 3: Projects that disturb less than one (1) acre are not required to comply with TPDES requirements unless they are part of a common plan of development of one (1) acre or more. For these projects 6.7.4 may be deleted.*

**6.7 Laws and Regulations:** *Add the following*:

**6.7.4** This Work is subject to the Texas Pollution Discharge Elimination System (TPDES) permitting requirements for the installation and maintenance of temporary and permanent erosion and sediment controls and storm water pollution prevention measures throughout the construction period.

OWNER has prepared a Storm Water Pollution Prevention Plan (SWPPP). Reference Section 01096 for this SWPPP.

CONTRACTOR’s responsibilities are as follows:

 **.1** Obtain a signed certification statement from all Subcontractors responsible for implementing the erosion / sedimentation controls and other best management practices that are part of the SWPPP. This statement shall indicate that the Subcontractor understands the permit requirements. The certified statement forms shall be attached to and become part of the SWPPP.

 **.2** Fill out the TCEQ’s “Construction Site Notice” form, which is Attachment 2 to the TPDES General Permit TXR150000 (form available from OWNER or on the Internet at <http://www.tceq.state.tx.us/assets/public/permitting/waterquality/attachments/stormwater/txr152d2.pdf> and post it near the main entrance of the Work, or at multiple postings if the Work is linear. Mail a copy of the completed Construction Site Notice form to the local Municipal Separate Storm Sewer Systems (MS4) representative:

TPDES Program Coordinator
City of Austin – WPD – ERM
P.O. Box 1088
Austin, TX 78767

 **.3** Maintain all erosion/sedimentation controls and other protective measures identified in the SWPPP in effective operating condition.

 **.4** Perform inspections every five (5) working days and after every ½ inch rainfall event, noting the following observations on an inspection form provided by OWNER:

1. Locations of discharges of sediment or other pollutants from the site.
2. Locations of storm water / erosion / sedimentation controls that are in need of maintenance.
3. Locations of storm water / erosion / sedimentation controls that are not performing, failing to operate, or are inadequate.
4. Locations where additional storm water / erosion / sedimentation controls are needed.

 **.5** Maintain at Work site at all times a copy of the SWPPP (with all updates, as described below) and inspection reports.

 **.6** Update the SWPPP as necessary to comply with TPDES permitting requirements, which includes noting changes in erosion / sedimentation controls and other best management practices that are part of the SWPPP and which may be necessary due to the results of inspection reports. Any SWPPP revisions or updates must be signed and certified by a Certified Professional in Erosion and Sedimentation Control (CPESC) or a Registered Professional Engineer.  If the SWPPP includes engineering calculations, then SWPPP must be sealed and signed by a Registered Professional Engineer.

 **.7** Upon completion of the Work, provide TPDES records to OWNER.

*6.7.4 Option 2: If Project will have an aggregate disturbed area of soil 5 acres or more, include the following paragraph 6.7.4, and appropriate subparagraphs as described below. If there is any other Project specific information, (e.g. Federal regulations connected to funding), insert it in 6.7.4. If neither of these conditions applies, delete the following 6.7.4 and all of its subparagraphs.*

**6.7 Laws and Regulations:** *Add the following 6.7.4*:

**6.7.4** This Work is subject to the Texas Pollution Discharge Elimination System (TPDES) permitting requirements for the installation and maintenance of temporary and permanent erosion and sediment controls and storm water pollution prevention measures throughout the construction period.

OWNER has prepared a Storm Water Pollution Prevention Plan (SWPPP). Reference Section 01096 for this SWPPP.

OWNER shall file the Owner's Notice of Intent and Notice of Termination to the Texas Commission on Environmental Quality (TCEQ). OWNER shall pay the TPDES storm water application fee.

CONTRACTOR's responsibilities are as follows.

 **.1** File a Notice of Intent (NOI) form with the TCEQ at least two (2) days prior to start of construction activity and pay for the permit. Form is available from OWNER or on the Internet at: <http://www.tceq.state.tx.us/assets/public/permitting/waterquality/forms/20022.pdf>

The form shall be mailed or submitted online to the TCEQ. If submitting online, the web address is <https://www6.tceq.state.tx.us/steers/>. If CONTRACTOR has not already registered to use the TCEQ online application submittal service, it will take up to ten (10) Working Days to receive a user name and password. CONTRACTOR shall take this timeframe into consideration if applying online. A Time Extension shall not be granted for this timeframe. The mailing address is:

Texas Commission on Environmental Quality
Storm Water & General Permits Team; MC-228
P.O. Box 13087
Austin, TX 78711-3087

A copy of the completed Notice of Intent (NOI) form must also be mailed to the local Municipal Separate Storm Sewer Systems (MS4) representative:

TPDES Program Coordinator
City of Austin – WPD – ERM
P.O. Box 1088
Austin, TX 78767

 **.2** Obtain a signed certification statement from all Subcontractors responsible for implementing the erosion and sediment control measures. This statement shall indicate that the Subcontractor understands the permit requirements. The certified statement forms shall be attached to and become part of the SWPPP.

 **.3** Post a notice near the main entrance of the Work with the following information.

1. The TPDES permit number for the Work or a copy of the NOI if a permit number has not yet been assigned,
2. The name and telephone number of a local contact person,
3. A brief description of the Work, and
4. The location of the SWPPP if the site is inactive or does not have an on-site location to store the plan.

If posting this information near a main entrance is infeasible due to safety concerns, the notice must be posted in a local public building. If the Work is linear (pipeline, highway, etc.), the notice must be placed in a publicly accessible location near where construction is actively underway and moved as necessary. For linear Work, multiple postings of the information may be required by OWNER (e.g. postings at both ends of the Work).

 **.4** Maintain all erosion and sediment control measures and other protective measures identified in the SWPPP in effective operating condition.

 **.5** Perform inspections every five (5) working days and after every ½ inch rainfall event, noting the following observations on an inspection form provided by OWNER:

1. Locations of discharges of sediment or other pollutants from the site.
2. Locations of storm water / erosion / sedimentation controls that are in need of maintenance.
3. Locations of storm water / erosion / sedimentation controls that are not performing, failing to operate, or are inadequate.
4. Locations where additional storm water / erosion / sedimentation controls are needed.

 **.6** Maintain at Work site at all times a copy of the SWPPP (with all updates, as described below) and inspection reports.

 **.7** Update the SWPPP as necessary to comply with TPDES permitting requirements, which includes noting changes in erosion / sedimentation controls and other best management practices that are part of the SWPPP and which may be necessary due to the results of inspection reports. Any SWPPP revisions or updates must be signed and certified by a Certified Professional in Erosion and Sedimentation Control (CPESC) or a Registered Professional Engineer.  If the SWPPP includes engineering calculations, then SWPPP must be sealed and signed by a Registered Professional Engineer.

 **.8** File a Notice of Termination with the TCEQ within thirty (30) days of final stabilization on all portions of the Work site. Form is available from OWNER or on the Internet at:

<http://www.tceq.state.tx.us/assets/public/permitting/waterquality/forms/20023.pdf>.

The NOTICE shall be mailed to:

Storm Water & General Permits Team; MC-228
P.O. Box 13087
Austin, TX 78711-3087
(512) 239-4671

 **.9** Upon completion of the Work, provide TPDES records to OWNER.

**ARTICLE 9 - ENGINEER/ARCHITECT'S STATUS DURING CONSTRUCTION**

*If Resident Project Representative is utilized, include the following paragraph 9.4; otherwise delete:*

* 1. **Project Representative:** *Add the following*:

*Add responsibilities, authority and limitations of Resident Project Representative here.*

**ARTICLE 11 - CHANGE OF CONTRACT AMOUNT**

*Article 11 should NOT be included in Civil type projects; it is only to be used in Vertical/Architectural projects. If desired, include the following modifications to 11.4.1.2 to clarify how a proposed lump sum adjustment to the Contract Amount will be evaluated; otherwise delete.*

**11.4 Determination of Value of Work:** *Add the following to paragraph 11.4.1.2*:

In the case of a Change Order determined by a mutually agreed lump sum or unit price properly itemized and supported by sufficient substantiating data, including documentation by subcontractors performing the work, to permit evaluation, the following method may be used:

**COMPONENT ONE** - The R.S. Means Co., Inc. 'Building Construction Cost Data' - latest edition - will be used as a basis for evaluating:

1a - the cost of labor (base rate, including fringe benefits),

1b - the cost of material and equipment to be incorporated in the Work, and

1c - the cost of tools, equipment and facilities necessary to accomplish the Work described in the change.

**COMPONENT TWO** - The costs of payroll taxes and insurance, Liability and Builder's Risk Insurance, shall be calculated as follows:

2a - Payroll taxes and Workers' Compensation Insurance <15% of payroll (Item 1a)>

2b - Liability and Builder's Risk Insurance <1% of "total costs" (Items 1a, 1b, 1c, and 2a)>

**COMPONENT THREE** - Overhead and profit shall be calculated as follows:

3a - For Subcontractors and for those portions of the Work performed by CONTRACTOR's own forces:

15% of the first $10,000.00 of costs and 10% of the balance over $10,000.00.

("costs" = Items 1a, 1b, and 1c, above, broken down into Contractor and Subcontractor costs).

3b - For the CONTRACTOR for that portion of the Work performed by Subcontractors:

10% of the first $10,000.00 of the Subcontractor costs and 7.5% of the balance over $10,000.00.

("costs" = Items 1a, 1b, and 1c, above, broken down into Subcontractor costs)

 **COMPONENT FOUR** - Bonds

Performance and Payment Bond according to the following table ("TOTAL COST" = Items 1a, 1b, 1c, 2a, 2b, 3a, and 3b):

|  |
| --- |
| **% OF TOTAL COST OF CHANGE ORDER ADDED FOR BOND EXPENSE** |
| 1.0 |

1. The total costs for the change, whether additive or deductive, shall be the sum total of COMPONENTS ONE - FOUR.

**ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

*If a "Warranty Item Form" is to be utilized on the Project, add the following paragraph 13.7.5 and attach a copy at the end of this section; otherwise delete.*

**13.7 Warranty Period:** *Add the following*:

**13.7.5** OWNER will utilize a "Warranty Item Form" (attached at the end of this Section) for the purpose of providing Written Notice of warranty defects to CONTRACTOR. CONTRACTOR shall date, sign, complete and return the form to OWNER when the defect is corrected, including such information on or attached to the form to describe the nature of the repairs or corrections that were made. If the defect cannot be corrected in seven (7) Calendar Days, CONTRACTOR shall provide a written explanation to the Owner's Representative describing the repairs needed and the time required to complete the repairs.

*Include the following edit of 14.1.5 for projects with federal funding.*

**14.1 Application for Progress Payment:** *Delete 14.1.5 and replace with the following*:

 **14.1.5** Retainage will not be withheld on federally funded projects.

*Include the following modification to 14.1.6, if applicable; otherwise delete.*

**14.1 Application for Progress Payment:** *Delete 14.1.6.3 and replace with the following*:

*For projects utilizing Time Extension Request form, include the following:*

 **.3** Time Extension Request.

*OR*

*For Working Day or Calendar Day contracts utilizing a contract time statement form (a.k.a. monthly time statement), include the following:*

 **.3** Contract time statement form signed by CONTRACTOR and Owner’s Representative. If CONTRACTOR does not agree with the number of accumulated days charged, CONTRACTOR shall file a Claim in accordance with Article 16.1, Filing of Claims.

*And/or insert any additional documentation to be included with Applications for Payment, e.g. photographs.*

*For water and wastewater line construction and/or roadway construction/reconstruction projects, include the following modifications of 14.7.1, otherwise delete:*

**14.7 Substantial Completion:** *Reference 14.7.1, and one of the following three provisions*:

 **14.7.1.1** For water and wastewater lines construction, Substantial Completion means that the Work, including all testing and disinfection, has been completed and accepted and the line(s) placed into service. A certificate of Substantial Completion will not be issued. Work that remains after Substantial Completion could include the final pavement of roadways, adjustment of structures to final grade and revegetation. Owner’s Representative will issue a notice specifying what portion of the Work is partially completed for the purpose of payment and what Work remains to be done on the portion being accepted as Substantially Complete. This subsection 14.7.1.1 changes the 00700 General Conditions definition of Substantial Completion.

 **14.7.1.1** For roadway construction and/or reconstruction, Substantial Completion means that the Work, including the final surface course, all permanent traffic control devices (pavement markings, signs, etc.), and substantial clean-up have been completed, accepted, and placed into service, and, any traffic signal or street lighting conduit that has been installed, lowered or relocated must be inspected for usability by, and must have received written approval from, the City’s traffic signal section and/or street lighting section, as well as having been completed, accepted, and placed into service. A certificate of Substantial Completion will not be issued. Work that remains after Substantial Completion could include final clean up. Owner’s Representative will issue a notice specifying what portion of the Work is partially completed for the purpose of payment and what Work remains to be done on the portion being accepted as Substantially Complete. This subsection 14.7.1.1 changes the 00700 General Conditions definition of Substantial Completion.

*Include the following paragraph 14.7.1.1if needed to identify unique substantial completion requirements*

*Add the following*:

**14.7.1.1**

*Identify any specific Work that must be completed in order for Work, or portion thereof, to be deemed substantially complete.*

*For water and wastewater line construction and/or roadway construction/reconstruction projects, include the following modifications of 14.8.1; otherwise delete:*

**14.8 Partial Utilization:** *Delete 14.8.1 and replace with the following (changes to the original text are identified by underlining)*:

 **14.8.1** OWNER at any time may request CONTRACTOR to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to Owner’s Representative that such part of the Work is substantially complete and request Owner’s Representative to issue a notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done on the portion being accepted. CONTRACTOR at any time may notify Owner’s Representative that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request Owner’s Representative to issue a notice specifying what portion of the Work is partially completed for the purpose of payment and what Work remains to be done on the portion being accepted. The provisions of paragraphs 14.7.1 and 14.7.2 will apply with respect to the notice specifying what portion of the Work is partially completed for the purpose of payment and what Work remains to be done on the portion being accepted.”

*For any construction projects, include the following modifications of 14.9;*

**14.9 Final Inspection:** *Add 14.9.1*:

 **14.9.1** CONTRACTOR shall complete attached Certificate of Final Completion Form as provided at the end of this Section. The completed and signed form for shall be provided to the ENGINEER for confirmation and acceptance. Finally, the form shall be provided to the OWNER for final acceptance of the work.

*For projects complying with the SWPPP requirements in 6.7.4, include the following modification of 14.10 and number accordingly; otherwise delete.*

**14.10 Final Application for Payment:** *Add the following paragraph(s) to 14.10*:

 **14.10.11** TPDES records in accordance with 6.7.4.

**ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

*If you included optional paragraph 13.7.5, use Warranty form attached at the end of this file; otherwise delete and add the* ***END*** *designator after 15.3 to indicate this is the end of this section:*

**ARTICLE 17 - Miscellaneous**

*For building projects only; otherwise delete.*

* + 1. **Notice of Building Project Defect and Right to Cure.**
			1. Pursuant to Texas Government Code Chapter 2272, before the OWNER brings a court proceeding with respect to alleged defective Work, the OWNER shall: (a) provide each party with whom the OWNER has a contract for the construction of a building a written report by certified mail, return receipt requested, describing with reasonable clarity: (i) the defective Work or related condition; (ii) the present physical condition of the building; and (iii) any modification, maintenance, or repairs to the building made by the OWNER or others since the building was initially occupied or used (the “Report”); b) allow each party against whom the OWNER has claimed and any known subcontractor or supplier, who is subject to the claim: (i) a reasonable opportunity to inspect the alleged defective Work or related condition identified in the Report for a period of 30 days after OWNER sends the Report; and (ii) at least 120 days after the inspection to: (A) correct the defective Work or related condition identified in the Report; or (B) enter into a separate agreement with the OWNER to correct the defective Work or related condition.
			2. The CONTRACTOR must provide bonds and insurance in accordance with Contract requirements to cover the correction of the defective Work or related condition.
			3. The right to correct the defective Work or related condition is unavailable, if the CONTRACTOR has been previously terminated for cause by the OWNER; or has been convicted of a felony.
			4. In addition, the right to correct defective Work or related condition terminates, if OWNER complies with the Report, inspection, and cure period process and a) the defective Work or condition was not corrected within 120 days or as otherwise agreed; or b) the attempt to correct the defective Work or condition resulted in new defective Work or condition.
			5. The CONTRACTOR shall provide a copy of the Report to its insurers and sureties and each subcontractor and supplier whose Work is subject to the claim not later than the fifth day after its receipt. The insurer shall treat the received Report as the filing of a suit asserting a claim against its insured for purposes of the relevant policy terms, but only with respect to an insurance policy delivered, issued, or renewed on or after January 1, 2020.
			6. This section does not prohibit or limit the OWNER from making emergency repairs to the property in question as necessary to protect the health, safety, and welfare of the public or building occupants.
			7. This section does not apply to an action for personal injury, survival or wrongful death, residential construction, a project with TxDOT or federal highway funding, or a “civil works” project as defined by Texas Government Code Section 2269.351.

**WARRANTY ITEM NO. \_\_\_\_\_ (PROJECT NAME)**

**The General Conditions of the Contract require that Warranty Defects be corrected within 7 days after written notice is received.**

**TO**: *contractor name address / telephone / fax / email*

**ATTENTION** **OF**:

**FROM**:
 *project manager name / address / telephone / fax / email*

**PROJECT**:
 *name / location / CIP ID number*

**END OF ONE YEAR WARRANTY**:

**SUBJECT**:
[ ] If checked, the damage requires immediate attention. The Contractor has been called.
[ ] If checked, the Consultant has been asked to consult with the Contractor on the problem.

**PLEASE CORRECT OR REPAIR THE FOLLOWING ITEM(S):**

**DATE OF REQUEST** **SIGNATURE** Project Manager

xc:
[ ] Phone No.

[ ] Phone No.

[ ] Phone No.

[ ] Phone No.

**RESPONSE FROM CONTRACTOR:** DATE CORRECTION WAS MADE:\_\_\_\_\_\_\_\_\_\_\_\_\_

The Contractor must endeavor to correct the defect within 7 calendar days after written notice is given. If the defect cannot be corrected in that time, Contractor shall provide a written explanation to the Owner's Representative describing the repairs needed and the time required to complete the repairs.

**Description of corrections made:**

**DATE OF REPLY** SIGNATURE

When the repair is complete, the contractor should return a copy to each of the following:

[ ] Phone No.

[ ] Phone No.

[ ] Phone No.

[ ] Phone No.

*Edit all sections below in red when form is required. See Section 14.9.1.*

****

**CERTIFICATE OF FINAL COMPLETION**

CITY OF KYLE

PURCHASE ORDER *# 000000XXX*

PROJECT NAME:

DESIGNER:

CONTRACTOR:

CONTRACT FOR: *PROJECT DESCRIPTION HERE.*

CONTRACT DATE: FINAL COMPLETION DATE:

The contractor hereby certifies the Work of this project to be in complete conformance to the Contract Documents and to be complete, for the limits identified on this form enabling the Owner to make use of the (*description of work here*) as intended.

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contractor Company Name CONTRACTOR NAME Date

*(Shall be signed by same representative who signed Contract)*

A list of items to be completed or corrected, verified by the Designer and Owner, was provided to Contractor *(DATE).* Failure to include any incomplete items on such a list does not alter the responsibility of the Contractor to provide all Work in complete conformance with the Contract Documents.

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Designer Company Name by ENGINEER OF RECORD Date

 *(Representative signature)*

The Work performed under this Contract has been reviewed and found to be finally completed by the City Engineer who has hereby established the Date of Final Completion as (*DATE*) which is also the date of commencement of all warranties and guarantees required by the Contract Documents for the limits identified above. The Date of Final Completion of the Work or designated portion thereof, is the date established by the City Engineer when construction is sufficiently complete, in accordance with the Contract Documents. The Owner may occupy the Work, or designated portion thereof, for the use for which it is intended.

The Owner accepts the Work or designated portion thereof as final completion and assumes full possession thereof, in accordance with the contract documents.

City of Kyle **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Owner (City of Kyle Representative ) Date

The responsibilities of the Owner and the Contractor for maintenance and warranty of work shall be as set out in the Contract Documents.

**END**