

NUECES WATER SUPPLY CORPORATION

MEMORANDUM

TO: Nueces Water Supply Corporation Board of Directors
FROM: Sherry Zimmerman, President
DATE: December 10, 2024
SUBJECT: Nueces Water Supply Corporation Meeting Notice and Agenda

A Regular Meeting of the Nueces Water Supply Corporation Board of Directors is scheduled for:

Wednesday, December 18, 2024

2:00 p.m.

South Texas Water Authority Boardroom
2302 East Sage Road, Kingsville, Texas

to consider and act upon any lawful subject which may come before it, including among others, the following:

Agenda

1. Call to order.
2. Citizen comments.
3. Approval of Minutes. (Attachment 1)
4. Treasurer's Report/Payment of Bills. (Attachment 2)
5. Fiscal Year 2024 Budget Amendments. (Attachment 3)
6. Proposed Fiscal Year 2025 Budget and retail water rates. (Attachment 4)
7. **Resolution 24-03.** Resolution adopting the recommended Fiscal Year 2025 Budget. (Attachment 5)
8. John Womack & Co., P.C. Letter of Engagement for Auditor Services. (Attachment 6)
9. Annual Meeting Schedule and Election Procedures. (Attachment 7)
10. NWSC Water Conservation and Drought Contingency Plan – Implementation of Stage 3 Drought Restrictions. (Attachment 8)
11. Water Finance Exchange Presentation on Texas Water Development Board Funding (Attachment 9)

This meeting notice was posted on NWSC's website, www.nueceswsc.com, and on indoor and outdoor bulletin boards at NWSC's administrative offices, 2302 East Sage Road, Kingsville, Texas at 4:30 am/PM on December 13, 2024

Frances De Leon
Assistant Secretary

12. Non-Standard Water System Extension Agreement with Tesla, Inc. (Attachment 10)
13. Temporary Limited Non-Standard Water Services Agreement with Tesla, Inc. (Attachment 11)
14. Non-Standard Service Agreement (Including Water System Extension) with Vaquero Driscoll Partners. LP; Easements related thereto. (Attachment 12)
15. Design/Build Contract with International Consulting Engineers, Inc. for Vaquero Ventures Utility Project (Contingent upon full execution of Item 14 above). (Attachment 13)
16. General Manager's Report.
17. Adjournment.

The Board may go into closed session at any time when permitted by Chapter 551, Government Code. Before going into closed session, a quorum of the Board must be assembled in the meeting room, the meeting must be convened as an open meeting pursuant to proper notice, and the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551, Government Code, authorizing the closed session.

SZ/JM/fdl
Attachments

ATTACHMENT 1

Approval of Minutes

NUECES WATER SUPPLY CORPORATION
Minutes – Regular Meeting
November 6, 2024

Board Members Present:

Kathleen Lowman
Sherry Zimmerman
Samuel Arciniega

Board Members Absent:

None

Staff Present:

John Marez
Frances De Leon
Jo Ella Wagner
Patrick Sendejo

Guests Present:

None

1. Call to Order.

Ms. Sherry Zimmerman, President, called the Regular Meeting to order at 2:09 p.m. at the South Texas Water Authority Boardroom, 2302 East Sage Road, Kingsville, Texas. A quorum was present.

2. Citizen comments.

No comments from the public were made.

3. Approval of Minutes.

Ms. Lowman made a motion to approve the minutes of the July 16, 2024 Regular Meeting as presented. Mr. Arciniega seconded. All voted in favor.

4. Treasurer's Report/Payment of Bills.

The following financial reports were presented for review and approval:

Treasurer's Report as of June 30, 2024

Account Activity for General Account for June 1, 2024 to June 30, 2024

Account Activity for Operations Account for June 1, 2024 to June 30, 2024

TEXPOOL Participant Statement for 06/01/2024 – 06/30/2024 for General Account

TEXPOOL Participant Statement for 06/01/2024 – 06/30/2024 for Security Deposit Account

Treasurer's Report as of July 31, 2024

Account Activity for General Account for July 1, 2024 to July 31, 2024

Account Activity for Operations Account for July 1, 2024 to July 31, 2024

TEXPOOL Participant Statement for 07/01/2024 – 07/31/2024 for General Account

TEXPOOL Participant Statement for 07/01/2024 – 07/31/2024 for Security Deposit Account

Treasurer's Report as of August 31, 2024

Account Activity for General Account for August 1, 2024 to August 31, 2024

Account Activity for Operations Account for August 1, 2024 to August 31, 2024

TEXPOOL Participant Statement for 08/01/2024 – 08/31/2024 for General Account

TEXPOOL Participant Statement for 08/01/2024 – 08/31/2024 for Security Deposit Account

Treasurer's Report as of September 30, 2024

Account Activity for General Account for September 1, 2024 to September 30, 2024

Account Activity for Operations Account for September 1, 2024 to September 30, 2024

TEXPOOL Participant Statement for 09/01/2024 – 09/30/2024 for General Account

TEXPOOL Participant Statement for 09/01/2024 – 09/30/2024 for Security Deposit Account

The following bills were presented for payment:

STWA Invoice S24-108 June 2024 Water Usage, Water Cost and Handling Charge	\$46,496.96
STWA Invoice S24-109 June 2024 General and Administration	\$19,035.90
STWA Invoice S24-112 June 2024 Taps and Repairs	\$18,311.25
STWA Invoice S24-120 July 2024 Water Usage, Water Cost and Handling Charge	\$39,050.41
STWA Invoice S24-121 July 2024 General and Administration	\$18,350.96
STWA Invoice S24-124 July 2024 Taps and Repairs	\$ 8,193.64
STWA Invoice S24-125 Reimbursement to STWA for ½ of fence replacement at NWSC Banquette PS and Central PS	\$ 19,712.33
STWA Invoice S24-128 Standby By Pay reimbursement (March 28, 2024 – June 26, 2024)	\$ 364.59
STWA Invoice S24-130 Quarterly reimbursement – Phone Service & Technology Support (04/01/24 – 06/30/24)	\$ 1,720.33
STWA Invoice S24-142 Reimbursement to STWA for Supplies and Materials	\$ 281.71
STWA Invoice S24-138 August 2024 Water Usage, Water Cost and Handling Charge	\$42,394.51

STWA Invoice S24-139 August 2024 General and Administration	\$18,572.08
STWA Invoice S24-144 August 2024 Taps and Repairs	\$17,268.27
STWA Invoice S24-152 September 2024 Water Usage, Water Cost and Handling Charge	\$34,248.31
STWA Invoice S24-153 September 2024 General and Administration	\$18,454.03
STWA Invoice S24-156 September 2024 Taps and Repairs	\$ 4,872.57
STWA Invoice S24-158 Standby By Pay reimbursement (July 3, 2024 – September 25, 2024)	\$ 364.59
STWA Invoice S24-160 Quarterly reimbursement – Phone Service & Technology Support (07/01/24 – 09/30/24)	\$ 1,755.33
STWA Invoice S24-162 Reimbursement for Part Time Employee (July 12, 2024 – September 20, 2024)	\$ 2,262.70
STWA Invoice S24-164 Reimbursement to STWA for Supplies and Materials	\$ 2,319.95

Ms. Lowman made a motion to approve the Treasurer’s Report and payment of the bills as presented. Mr. Arciniega seconded and all voted in favor.

5. Update on Vaquero Ventures’ request for service on FM 665.

Mr. Marez gave a brief update on the Vaquero Ventures project. He said the TxDOT permit has been approved. He added that the design has been changed from the initial plans and changes to the right of way have been requested. He asked for approval of the agreement with Vaquero Ventures contingent on all legal and engineering approval. Ms. Lowman moved to approve the agreement contingent on legal and engineering approval. Mr. Arciniega seconded. All voted in favor.

6. Bill of Sale Conveyance from South Texas Water Authority for connection at CR 28.

Mr. Marez presented a Bill of Sale from South Texas Water Authority for the Tesla connection at CR 28. He explained that STWA must convey the final connection of their 42” waterline to NWSC in order to allow the Corporation to provide and sell water to this customer. STWA

approved the Bill of Sale at their October 29th meeting contingent upon payment in full from Tesla to STWA. The next step is for NWSC to accept the conveyance. Mr. Arciniega made a motion to approve the Bill of Sale for the line tap and service line contingent on Tesla making the necessary payments to STWA. Ms. Lowman seconded and all voted in favor.

7. Wholesale water service agreement between South Texas Water Authority and Nueces Water Supply Corporation.

Mr. Arciniega made a motion to table this agenda item. Ms. Lowman seconded. The motion carried.


8. General Manager' Report.

Mr. Marez reported that the office will be closed for holidays on November 11th, November 28th and November 29th and a meeting will be scheduled to adopt a year end budget and next year's budget.

9. Adjournment.

With no further business to conduct, Ms. Lowman made a motion to adjourn the meeting at 3:11 p.m. Mr. Arciniega seconded the motion. All voted in favor.

Respectfully submitted,


Frances De Leon
Assistant Secretary

ATTACHMENT 2

Treasurer's Report/Payment of Bills



SOUTH TEXAS WATER AUTHORITY

2302 E. SAGE RD.

KINGSVILLE, TEXAS 78363

INVOICE

S24 - 173

November 19, 2024

Nueces Water Supply Corporation
2302 E. Sage Rd.
Kingsville, Texas 78363

Usage

Table with 2 columns: Usage Category and Gallons. Rows include Agua Dulce Rural, Banquete - NWSC Pump Station, Bishop East, Central Rural, Driscoll Rural, Sablatura Park, LCS, KB Foundation, Tesla, and a total of 11,876,055.

Total Water Usage for Period 10/1/2024 to 11/1/2024 11,876,055
Contract Year to Date Usage ----- 11,876,055 gallons

Water Rate (per thousand gallons)

Cost of Water from City of Corpus Christi (Total charges divided by total consumption):

Table showing cost breakdown: Total charges \$141,759.12, Total consumption 50,310, Cost of Water from City of Corpus Christi \$ 2.817713, STWA Handling Charge 11,876,055 g @ \$ 0.500000 = \$ 5,938.03, Corpus Christi Water Cost 11,876,055 g @ \$ 2.817713 = \$ 33,463.31, Water Rate for current billing period \$ 3.317713.

Cost of Water

11,876,055 gallons @ \$3.317713 per thousand gallons \$ 39,401.34

Total Due for Water Usage for period 10/1/2024 to 11/1/2024 \$ 39,401.34

Table titled 'Net Water Revenue - STWA' showing Handling Charge \$5,938.03, less Pumping Cost \$2,423.71, and Net Revenue \$3,514.32.

Payment Due within 30 days of Receipt of Invoice

Thank You!

For more information about the Authority, including information about the Authority's board and board meetings, please go the Comptroller's Special Purpose District Public Information Database located at

https://spdpid.comptroller.texas.gov/ or the Authority's website www.stwa.org

Jose M. Graveley, President
Frances Garcia, Vice-President
Imelda Garza, Secretary-Treasurer
Rudy Galvan, Jr.
Kathleen Lowman

(361) 592-9323 Or (361) 692-0337 (C.C. line)
Fax: (361) 592-5965

Jose Morales
Angela N. Pena
Arturo Rodriguez
Patsy A. Rodgers
John Marez, Administrator

INVOICE

S24 - 174

November 19, 2024

Nueces Water Supply Corporation
 2302 E. Sage Rd.
 Kingsville, Texas 78363

Description			Amount Due
No. of Connections This Month:		1111	
1111 General Maintenance (per connection) @	\$ 6.25		\$ 6,943.75
1111 Read Meters (per connection) @	\$ 1.95		2,166.45
3 Sample Collection (per sample) @	\$ 40.00		120.00
<i>Billing Services for Month of:</i>			
<i>October, 2024</i>			
244 Final Notice Cards @	\$ 1.10	10/08/24	268.40
1111 Statements @	\$ 2.00	10/11/24	2,222.00
4 Meter Removal/Cancel Letters @	\$ 1.75	10/01/24	7.00
1111 Administration (per connection) @	\$ 6.00		6,666.00
6374 Copies @	\$ 0.10		637.40
Postage			38.61
TOTAL			\$ 19,069.61

Payment Due By
 November 30, 2024

Thank You!

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 Frances Garcia, Vice-President
 Imelda Garza, Secretary-Treasurer
 Rudy Galvan, Jr.
 Kathleen Lowman

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Joe Morales
 Angela N. Pena
 Arturo Rodriguez
 Patsy A. Rodgers
 John Marez, Administrator

S24 - 177

November 21, 2024

Nueces Water Supply Corporation
2302 E. Sage Road
Kingsville, Tx 78363

DATE	DESCRIPTION	W.O. #	Invoiced	
			to others	Due to STWA
08/29/24	Customer service inspection at acct. #1418-Cisneros, James Drive. Passed inspection.	8776	75.00	75.00
---	****Billed in September****	8777	---	---
10/03/24	Customer reported no water. Removed magnet from RDM to repair meter at acct. #75-Olivarz, CR 34.	8778	0.00	60.00
10/02/24	Meter reservice and customer service inspection at acct. #1139-Hernandez, Reyes St. Failed inspection.	8779	185.00	185.00
10/05/24	Tap & meter set at acct. #1422-Salinas, Herrera St.	8780	725.00	430.00
10/05/24	Tap & meter set at acct. #1421-Arriaga, US Highway 77.	8781	725.00	430.00
10/05/24	After hours call-out, report of no water at acct. #918-Cuellar, CR 79. Meter was repaired.	8782	0.00	106.25
10/06/24	Weekend residual checks on rural system and read meter.	8783	0.00	17.50
10/05/24	Weekend residual checks on rural system and read meter.	8784	0.00	17.50
10/09/24	Customer reported low water pressure for the previous two weeks. Removed meter and flushed out line at acct. #410-Flores, Oak Circle.	8785	0.00	162.50
10/09/24	After hours work to complete the corporation's meter rereads.	8786	0.00	45.24
10/09/24	Customer reported no water. Removed magnet from RDM to repair meter at acct. #601-Arias, Tierra Verde.	8787	0.00	191.25
----	****Void****	8788	---	---
10/10/24	Customer requested new lid. Found old dual check valve on meter. Also, line on customer side popped out of coupling. Made a temporary repair at acct. #695-Pena, Heather Rd.	8789	0.00	120.00
10/11/24	Removed dual check valve at acct. #695-Pena, Heather Rd.	8790	0.00	60.00
10/08/24	Customer reported no water. Removed magnet from RDM to repair meter at acct. #156-Garza, Beechcraft Rd.	8791	0.00	165.00
10/12/24 - 10/13/24	Weekend residual checks on rural system and read meter.	8792	0.00	35.00
10/14/24	Set flush valves out in Bishop.	8793	0.00	113.33
10/15/24	After hours call out for loss of water pressure at meter. Shaved off rubber to repair meter at acct. #501-Conkin, Alice Rd.	8794	0.00	276.25
10/09/24	After hours call out to gather information at TESLA site for I.C.E.	8795	0.00	35.00
10/11/24	Customer reported meter was not working properly. Removed rubber from locking mechanism at acct. #490-Briones, CR79.	8796	0.00	60.00
10/15/24	Unlock meter at acct. #1316-Smart, La Paloma.	8797	60.00	60.00
10/15/24	Changed out meter; missing node and register at acct. #154-Trevino, Rachel Lane.	8798	0.00	110.00
10/15/24	Changed out meter; register not attached at acct. #1385-Holsonback Part #4, Ranch Rd.	8999	0.00	110.00

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John Marez, Exec.Dir/Administrator

10/15/24	Changed out meter due to a RWSC meter being installed in error.	8800	0.00	0.00
10/17/24	After hours work to attend to customers and phone calls due to Central Pump Station outage.	8801	0.00	60.85
10/17/24	After hours work to prepare a map for website of area affected by boil water notice.	8802	0.00	19.01
10/17/24	After hours work to deliver boil water notices, open valve at CR 77 by Central Pump Station, and monitor Central Pump Station.	8803	0.00	2,248.75
10/18/24	After hours work to take light tower from office to Central Pump Station.	8804	0.00	87.50
10/19/24	After hours work to distribute bottled water to customers and flush the main line for Central Pump Station.	8805	0.00	1,592.50
10/21/24	After hours work delivering rescind boil water notices.	8806	0.00	105.00
10/19/24	After hours work to move water into the city of Agua Dulce's elevated storage tank to pressure up Nueces rural system.	8807	0.00	192.50
10/20/24	After hours work to collect BacT Samples.	8808	0.00	140.00
10/20/24	After hours work to fill ground storage tanks at Banquete and Sablatura Park.	8809	0.00	192.50
10/21/24	Customer reported meter leak. Found leak on customer's side at acct. #118-Gulf Coast Coop on CR 16.	8810	21.25	21.25
10/21/24	Customer reported no water. Removed rubber from meter to resolve the issue at acct. #1171-Carrasco, Lost Creek.	8811	0.00	30.00
10/22/24	Meter removal due to customer's request to cancel at acct. #1105-Powell, Ja Lin.	8812	0.00	60.00
10/22/24	Meter removal due to non-payment at acct. #1338-Lopez, La Paloma.	8813	60.00	60.00
10/22/24	Meter reservice and locked meter at acct. #1428-Gomez, CR 75A.	8814	110.00	110.00
10/22/24	Meter removal due to non-payment at acct. #536-Kekahuna, Hwy 77.	8815	60.00	60.00
10/19/24	After hours work to flush dead end mains for Central Pump Station.	8816	0.00	350.00
----	****Void****	8817	---	---
10/18/24	After hours call-out to inspect Sablatura Park, Banquete, and Agua Dulce ground storage tank water levels to determine action plan for water distribution.	8818	0.00	140.00
10/18/24	After hours work to hand out bottled water to customers at Sablatura Park.	8819	0.00	157.50
10/19/24	After hours call out to check Banquete Pump Station and surrounding area for water availability in rural lines.	8820	0.00	525.00
10/20/24	After hours work flushing Agua Dulce to make sure system was pressured up.	8821	0.00	52.50
10/22/24	Customer reported water turning off and on. Shaved off rubber to repair meter at acct. #734-Garcia, Indian Trails.	8822	0.00	166.25
10/18/24	After hours call-out to drop off bottled water at Sablatura Park.	8823	0.00	35.00
10/08/24	Customer reported no water. Placed a temporary meter until old meter could be repaired at acct. #695-Pena, Heather Rd.	8824	0.00	110.00
10/24/24	Returned to install repaired original meter at acct. #695-Pena, Heather Rd.	8825	0.00	110.00
10/19/24	After hours call out to set out flush valves due to by pass at Central Pump Station after tank collapse.	8826	0.00	361.25
10/23/24	After hours work to process lockout fees.	8827	0.00	8.69
10/24/24	After hours call out to check Agua Dulce tank level.	8828	0.00	17.50
10/24/24	After hours call out to turn off flush valve on CR 4.	8829	0.00	42.50
10/25/24	After hours call out to check on Old Banquete Pump Station, New Banquete Pump Station, Sablatura Park Pump Station, and Agua Dulce Pump Station.	8830	0.00	87.50

10/26/24	After hours call out to close Central MOV and bypass around MOV to feed water into the ground storage tank and pressure up rural line.	8831	0.00	122.50
10/26/24	After hours call out to reset SCADA at New Banquete Pump Station.	8832	0.00	35.00
10/26/24-	Weekend residual checks on rural system and read meters.	8833	0.00	35.00
10/27/24				
10/28/24	After hours work to close valve at CR 77 and Hwy 44 due to leak.	8834	0.00	127.50
10/18/24	After hours work to pick up bottled water at L & F Distributors and hand out bottled water at Sablatura Park.	8835	0.00	262.50
10/29/24	After hours unlocks at acct. #1359-Hoecherl, CR 12 and #1412-Felan, Ranch Rd.	8836	180.00	180.00
10/29/24	Regular hours call out to check meter for malfunction. Removed rubber from meter to resolve the issue at acct. #209-Garcia, Cessna.	8837	0.00	30.00
10/29/24	After hours work to install new flush valve at CR 77 and CR 36.	8838	0.00	1,156.25
10/30/24	After hours work to repair leaking valve at CR 77 and Hwy 44.	8839	0.00	1,402.50
10/30/24	After hours work on SCADA at Banquete Pump Station.	8840	0.00	105.00
10/30/24	After hours work to pick up insulation at Tesla and take to office.	8841	0.00	17.50
10/21/24	After hours required to distribute Rescind Boil Water notices.	8842	0.00	87.50
10/31/24	October 2024 Regular hour unlocks at accts. #1346-Cavazos, #1161-Caldera/Flores, #203-Rodriguez, #273-Candela/Cruz, #1268-Esquivel.	8843	300.00	300.00

Total Due STWA \$ 13,869.62
Amount Invoiced to Others \$ 2,501.25

Payment due by November 30, 2024

Thank you



Invoice #S24-180

October 31, 2024

Bill To

Nueces Water Supply Corporation
 2302 E. Sage Rd.
 Kingsville, TX 78363
 361 592-3952

For

Reimbursement Invoice

Item Description	Amount
PSI Holdings: Troubleshooting SSL Certificate	\$47.50

Subtotal

\$47.50

Tax Rate

Other Costs

Total Cost

\$47.50

Make all checks payable to South Texas Water Authority

If you have any questions concerning this invoice, use the following contact information:

Contact Noemi S. Flores, 361 592-9323 or nflores@stwa.org

Thank you for your business!

ATTACHMENT 3

FY 2024 Budget Amendments

This information was not available at the time that the packet was sent and will be provided under separate cover.

ATTACHMENT 4

FY 2025 Budget

This information was not available at the time that the packet was sent and will be provided under separate cover.

ATTACHMENT 5

Resolution 24-03

NUECES WATER SUPPLY CORPORATION

Resolution 24-03

RESOLUTION ADOPTING THE RECOMMENDED FISCAL YEAR 2025 BUDGET.

WHEREAS, the Nueces Water Supply Corporation is required to adopt a budget for each fiscal year, and

WHEREAS, the Board of Directors has reviewed the attached budget and finds it acceptable.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Nueces Water Supply Corporation adopts the attached Fiscal Year 2025 budget.

Duly adopted this 18th day of December, 2024.

SHERRY ZIMMERMAN, VICE-PRESIDENT

ATTEST:

KATHLEEN LOWMAN, SECRETARY/TREASURER

ATTACHMENT 6

Auditor Engagement Letter

Memo

To: Nueces Water Supply Corporation Board of Directors
From: John Marez, General Manager Interim
Date: December 13, 2024
Re: Engagement Letter-John Womack and Company

Background:

Enclosed is a Letter of Engagement for Auditing Services with John Womack & Company, P.C. for fiscal year ending December 31, 2024.

Analysis:

Last year's engagement letter quoted a cost of \$6,750 for the external audit. Enclosed is the Letter of Engagement in the amount of \$7,500 for a basic audit.

Staff Recommendation:

Accept the Letter of Engagement for Auditing Services with John Womack & Company, P.C. for fiscal year ending December 31, 2024. Review the letter outlining the various factors of the external audit including Communication, Independence, The Audit Planning Process, The Concept of Materiality in Planning and Executing the Audit, Our Approach to Internal Control Relevant to the Audit, and Timing of the Audit and instruct staff to reflect that the letter was reviewed in the meeting's minutes.

Board Action:

Determine whether to accept the engagement letter for FY 2024 audit services in an amount of \$7,500.

Summary:

As mentioned for several years, staff has a good working relationship with the accountants of John Womack and Company. This working relationship is not limited to the end of the year audit. Rather, the Company provides valuable support throughout the year.

JOHN WOMACK & CO., P.C.
CERTIFIED PUBLIC ACCOUNTANTS

JOHN L. WOMACK, CPA
MARGARET KELLY, CPA

P.O. BOX 1147
KINGSVILLE, TEXAS 78364
(361) 592-2671
FAX (361) 592-1411

December 10, 2024

Nueces Water Supply Corporation
2302 East Sage Road
Kingsville, Texas 78363

We are pleased to confirm our understanding of the services we are to provide for Nueces Water Supply Corporation (a nonprofit corporation) for the year ended December 31, 2024.

Audit Scope and Objectives

We will audit the financial statements of Nueces Water Supply Corporation, which comprise the statement(s) of net position as of December 31, 2024, the related statements of activities, and cash flows for the year then ended, and the disclosures (collectively, the "financial statements"). Also, the following supplementary information accompanying the financial statements will be subjected to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America (GAAS), and we will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statements:

1. Statement of Activities – Budget and Actual
2. Schedule of Insurance Coverage
3. Schedule of Water Purchases and Sales
4. Schedule of FDIC Insurance and Pledged Securities
5. Schedule of Fixed Assets.

The objectives of our audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error,



and issue an auditor's report that includes our opinion about whether your financial statements are fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. Misstatements, including omissions, can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment of a reasonable user made based on the financial statements.

Auditor's Responsibilities for the Audit of the Financial Statements

We will conduct our audit in accordance with GAAS and will include tests of your accounting records and other procedures we consider necessary to enable us to express such an opinion. As part of an audit in accordance with GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit.

We will evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management. We will also evaluate the overall presentation of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the Corporation or to acts by management or employees acting on behalf of the Corporation.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is an unavoidable risk that some material misstatements may not be detected by us, even though the audit is properly planned and performed in accordance with GAAS. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting, or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

We will obtain an understanding of the Corporation and its environment, including the system of internal control, sufficient to identify and assess the risks of material misstatement of the financial statements, whether due to error or fraud, and to design and

perform audit procedures responsive to those risks and obtain evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentation, or the override of internal control. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. Accordingly, we will express no such opinion. However, during the audit, we will communicate to you and those charged with governance internal control related matters that are required to be communicated under professional standards.

The audit documentation for this engagement is the property of John Womack & Co., P.C. and constitutes confidential information. However, we may be requested to make certain audit documentation available to cognizant agencies pursuant to authority given to it by law or regulation. If requested, access to such audit documentation will be provided under the supervision of John Womack & Co., P.C. personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the cognizant agency. The cognizant agency may intend, or decide, to distribute the copies or information contained therein to others, including other government agencies.

As part of this communication, we have not identified any significant risks of material misstatement. However, planning has not concluded, and modifications may be made. If new significant risks are identified after the date of this initial communication, for example during the course of fieldwork, we will communicate them to those charged with governance in a timely manner, in writing.

We will also conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Corporation's ability to continue as a going concern for a reasonable period of time.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of receivables and certain assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will also request written representations from your attorneys as part of the engagement and they may bill you for responding to this inquiry.

Our audit of the financial statements does not relieve you of your responsibilities.

Responsibilities of Management for the Financial Statements

Our audit will be conducted on the basis that you acknowledge and understand your responsibility for designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including monitoring ongoing activities; for

the selection and application of accounting principles; and for the preparation and fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States of America with the oversight of those charged with governance. You are also responsible for making drafts of financial statements, all financial records, and related information available to us; for the accuracy and completeness of that information (including information from outside of the general and subsidiary ledgers); and for the evaluation of whether there are any conditions or events, considered in the aggregate, that raise substantial doubt about the Corporation's ability to continue as a going concern within one year after the date that the financial statements are available to be issued. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, identification of all related parties and all related-party relationships and transactions, and other matters; (2) additional information that we may request for the purpose of the audit; and (3) unrestricted access to persons within the Corporation from whom we determine it necessary to obtain audit evidence. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Corporation involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Corporation received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the Corporation complies with applicable laws and regulations. You are responsible for the preparation of the supplementary information in conformity with accounting principles generally accepted in the United States of America. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon.

With regard to publishing the financial statements on your website, you understand that websites are a means of distributing information and, therefore, we are not required to read the information contained in those sites or to consider the consistency of other information in the website with the original document.

Other Services

We will assist in preparing the financial statements of Nueces Water Supply Corporation in conformity with accounting principles generally accepted in the United States of America based on information provided by you.

We will perform the services in accordance with applicable professional standards issued by the American Institute of Certified Public Accountants. The other services are limited to the financial statement services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

You agree to assume all management responsibilities for the financial statement preparation services, and any other nonattest services we provide; oversee the services by designating an individual, JoElla Wagner, with suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accept responsibility for them.

You are required to disclose the date through which subsequent events have been evaluated and whether that date is the date the financial statements were issued or were available to be issued. You agree that you will not date the subsequent event disclosure earlier than the date of your management representation letter.

In connection with this engagement, we may communicate with you or others via email transmission. As emails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that emails from us will be properly delivered and read only by the addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure of emails transmitted by us in connection with the performance of this engagement. In that regard, you agree that we shall have no liability for any loss or damage to any person or entity resulting from the use of email transmissions, including any consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information.

Limitation on Liability

In the unlikely event that differences concerning our services or fees should arise that are not resolved by mutual agreement, to facilitate judicial resolution and save time and expense of both parties, the Corporation agrees to participate in mediation, under the Commercial Mediation Rules of the American Arbitration Association, before any claim is asserted.

In the event that John Womack & Co., P.C. is found to be negligent in provision of any services covered by this agreement which result in damage to the Corporation, John Womack & Co., P.C.'s liability to the Corporation will be limited to actual damages or losses incurred by the Corporation. John Womack & Co., P.C. will not be liable to the Corporation for any punitive damages.

Engagement Administration, Fees, and Other

We understand that your employees will prepare all cash, accounts receivable, and other confirmations we request and will locate any documents selected by us for testing. We will not undertake any accounting services (including but not limited to reconciliation of accounts and preparation of requested schedules) without obtaining approval through a written change order or additional engagement letter for such additional work. We will schedule the engagement based in part on deadlines, working conditions, and the availability of your key personnel. We will plan the engagement based on the assumption that your personnel will cooperate and provide assistance by performing tasks such as preparing requested schedules, retrieving supporting documents, and preparing confirmations. If, for whatever reason, your personnel are unavailable to provide the necessary assistance in a timely manner, it may substantially increase the work we have to do to complete the engagement within the established deadlines, resulting in an increase in fees over our original fee estimate.

John L Womack is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it. We expect to begin our audit on approximately March 03, 2025. To ensure that John Womack & Co., P.C.'s independence is not impaired under the AICPA *Code of Professional Conduct*, you agree to inform the engagement partner before entering into any substantive employment discussions with any of our personnel.

Our audit engagement ends on delivery of our audit report. Any follow-up services that might be required will be a separate, new engagement. The terms and conditions of that new engagement will be governed by a new, specific engagement letter for that service.

We estimate that our fees for the audit will be \$7,500. You will also be billed for travel and other out-of-pocket costs such as report production, word processing, postage, confirmation service provider fees, etc. The fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the engagement. If significant additional time is necessary, we will keep you informed of any problems we encounter and our fees will be adjusted accordingly. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. You may request that we perform additional services not addressed in this engagement letter. If this occurs, we will communicate with you

concerning the scope of the additional services and the estimated fees. We also may issue a separate engagement letter covering the additional services. In the absence of any other written communication from us documenting such additional services, our services will continue to be governed by the terms of this engagement letter.

As an attest client, John Womack & Co., P.C. cannot retain your documents on your behalf. This is in accordance with the ET 1.295.143 of the *AICPA Code of Professional Conduct*. Nueces Water Supply Corporation is responsible for maintaining its own data and records.

Reporting

We will issue a written report upon completion of our audit of Nueces Water Supply Corporation's financial statements which will also address other information in accordance with AU-C 720, *The Auditor's Responsibilities Relating to Other Information Included in Annual Reports*. Our report will be addressed to the Board of Directors of Nueces Water Supply Corporation. Circumstances may arise in which our report may differ from its expected form and content based on the results of our audit. Depending on the nature of these circumstances, it may be necessary for us to modify our opinion, add a separate section, or add an emphasis-of-matter or other-matter paragraph to our auditor's report, or if necessary, withdraw from this engagement. If our opinion is other than unmodified, we will discuss the reasons with you in advance.

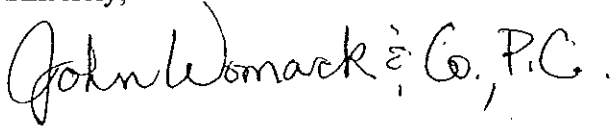
If circumstances occur related to the condition of your records, the availability of sufficient, appropriate audit evidence, or the existence of a significant risk of material misstatement of the financial statements caused by error, fraudulent financial reporting, or misappropriation of assets, which in our professional judgment prevent us from completing the audit or forming an opinion on the financial statements, we retain the right to take any course of action permitted by professional standards, including declining to express an opinion or issue a report, or withdrawing from the engagement.

You have engaged us to include in our report a section that discusses key audit matters, if any, identified during our audit. Key audit matters are matters that are communicated or required to be communicated to those charged with governance that were, in the auditor's professional judgment, of most significance to the audit of the financial statements of the current period. Key audit matters may involve, among other things, areas of higher assessed risk of material misstatement or significant identified risks; areas that required significant auditor judgment, such as accounting estimates or other areas subject to a high degree of estimation uncertainty; or the effect of significant events or transactions in the current period. For each key audit matter identified in our report, our report will describe the primary reason(s) we designated it as a key audit matter, how it was addressed in the audit, and refer to the financial statement account(s) or disclosure(s) related to it. The communication of key audit matters does not alter in any way our opinion on the financial statements, taken as a whole. If our audit does not identify any key audit matters, our audit report will state that conclusion.

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We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the attached copy and return it to us.

Sincerely,



John Womack & Co., P.C.

RESPONSE:

This letter correctly sets forth the understanding of Nueces Water Supply Corporation.

Management signature: _____

Date: _____

Governance signature: _____

Title: _____

ATTACHMENT 7

Annual Meeting

Memo

To: Nueces Water Supply Corporation Board of Directors
From: John Marez, Interim General Manager
Date: December 13, 2024
Re: Election of Officers until Annual Board Meeting

Background:

Per State requirements, the Board must review the Election Procedures for their Annual Membership meeting. The procedures require sending a notice of vacancies and number of positions that are up for election. The positions up for election in April 2025 are currently held by Kathleen Lowman and Samuel Arciniega Jr along with two vacancies remaining on the board for a total of four (4) positions.

The procedures and timeframes attached will notify Corporation members that the positions up for election. However, if there are not any opposing candidates, the sole nominees can be declared winners by resolution and the election can be cancelled.

Analysis:

Enclosed are the election procedures for the Board's review and approval. The documents have been updated to account for the new dates. With regards to the recommended TRWA changes, staff and water supply corporations around Texas have depended on the TRWA to provide sensible advice not only on election matters but operations and board involvement.

Staff Recommendation:

Review the background documentation for this process and determine whether to integrate the applicable items. Provide instruction to staff to begin the process for an election to be held.

Board Action:

Motion to approve the attached timelines and application for the board position up for election during the April 2025 Annual Membership meeting.

Summarization:

Once approved, staff will proceed according to the established timeline (attachment) to provide notices and begin the process of holding an election (if needed)..

Nueces Water Supply Corporation
Timeline for Election Procedures for Annual Membership Meeting
and Election of Directors

Immediately After the Membership Meeting – Hold a Regular Meeting and:

1. Appoint a Credentials Committee
2. Elect Officers

At least 90 Days before Membership Meeting – Ballot, Director Application Form and Election Procedures are reviewed and adopted by the Board. **This is by January 8, 2025.**

At least 80 Days before Membership Meeting – Notice of opportunity to submit application for director offices is sent to members. **Due to the weekend, this is on January 17, 2025.**

45 Days before Membership Meeting – Applications for director offices are due. NWSC will review applications upon receipt and notify candidates of any defects that need to be cured. NWSC cannot guarantee the opportunity to cure if application is submitted less than 48 hours before this deadline. NWSC determines if candidates are unopposed. **Due to the weekend, this is on February 24, 2025.**

40 Days before Membership Meeting – Board meets to:

1. Select an independent election auditor;
2. Finalize and approve the ballot, agenda and meeting packet for the member meeting;
3. If applicable, pass resolution declaring elected all unopposed candidates and direct that resolution be posted at the NWSC's main office. **This is on February 27, 2025.**

At least 30 Days before Membership Meeting – Members' meeting packets, including notice of meeting, agenda and ballots are mailed. **Due to the weekend, this is on March 7, 2025.**

28 Days before Membership Meeting – Voting Roster is made available to the members of the Corporation in the office. **This is on March 11, 2025.**

3 days (72 hours) before the Membership Meeting – NWSC posts notice of the Membership Meeting and Board meeting immediately following membership meeting in accordance with the Open Meetings Act. **Due to the weekend, this is on April 4, 2025.**

12 Noon, 1 day before the Membership Meeting – Deadline for submittal of the ballots by mail or hand delivered to the office. **This is April 7, 2025.**

Meeting/Election Day – Meeting is held and ballots are accepted until presiding director makes a last call for ballots. If applicable, presiding director reads into the record resolution declaring unopposed candidates elected. Upon adjournment, new Board of Directors meets. **This day is April 8, 2025.**

Memorandum

To: All NWSC Members

From: NWSC Board of Directors and John Marez

Date: January 15, 2025

Re: Application for Nueces Water Supply Corporation Board of Directors Position

The Nueces Water Supply Corporation Board of Directors is contacting all its members to notify them of the upcoming election to be held on April 8, 2025. There are two (2) positions up for election. These positions are currently held by Kathleen Lowman and Samuel Arciniega, Jr. The term for these positions ends in 2028. At this time, the Corporation is requesting members interested in running for the position of Director to submit the necessary information. If you are submitting another person's name as a potential candidate, please note that the same paperwork is needed. The NWSC Board usually meets quarterly and meetings last approximately one hour. Enclosed is a Nueces Water Supply Corporation Application for 2025 Board of Director and Candidate Information Form.

This completed form must be returned by February 24, 2025.

New election procedures were adopted in November of 2022. The Corporation operates under Election Procedures in accordance with the Texas Water Code. If you have any questions regarding this information, please contact our office.

JM/fdl
Enclosure

Nueces Water Supply Corporation
Application for 2025 Board of Director and Candidate Information

The application form must be completed and submitted to the Corporation's office by **February 24, 2025** for the applicant's name to be placed on the ballot.

Biographical Information:

Name of Candidate: _____
Mailing Address: _____
Physical Address (if different from mailing): _____
Telephone #: _____ Member of Corporation's System Since: _____

Qualifications (if applicable):

Previous Board of Director Experience: _____

Business or Governmental Experience: _____

Education/Training Experience: _____

Personal Statement (100 word limit):

Affirmation and Pledge to Serve:

I, _____, will be at least 18 years of age on the first day of the director term; am a member of the Corporation; have not been determined by a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote; and have not been finally convicted of a felony.

I have reviewed the Corporation's Articles of Incorporation and Bylaws and I meet the qualifications set forth therein.

If elected, I pledge to serve as a director on the Corporation's Board of Directors; and will do my best to attend all meetings, regular or called, as designated by the board.

Under penalties of perjury, I declare that I have reviewed the information presented in this Application, including accompanying documents, and to the best of my knowledge and belief, the information is true, correct and complete.

Signature of Applicant _____ Date _____

PLEASE PRINT NEATLY OR TYPE YOUR RESPONSES. A COPY OF THIS FORM WILL BE
DISTRIBUTED TO CORPORATION MEMBERS AS A MEANS OF PROVIDING YOUR
QUALIFICATION STATEMENTS.

ATTACHMENT 8

Stage 3 Water Restrictions

Memo

To: Nueces Water Supply Corporation, Board of Directors
From: John Marez, Interim General Manager
Date: December 13, 2024
Topic: Water Conservation and Drought Contingency Plan – Stage 3 Implementation

Background:

In June 2024 the NWSC adopted an updated Water Conservation and Drought Contingency Plan (WCP/DCP) as required by the state. This plan which is typically renewed every five years, is in alignment with the revised plans from the City of Corpus Christi. Both the South Texas Water Authority (STWA).

Currently, the combined levels for Corpus Christi Water's primary Western water sources, Lake Corpus Christi and Choke Canyon Reservoirs, have dropped to 19.9% capacity. In response, Corpus Christi Water (CCW) is preparing to declare Stage 3 of its Drought Contingency Plan on December 16, 2024. This action aligns with severe drought conditions affecting the Coastal Bend region, as noted in Governor Greg Abbott's disaster declaration for 76 counties, including Nueces County.

Under Nueces Water Supply Corporation's (NWSC) Drought Contingency Plan, we are required to monitor the regional water provider's status and take parallel actions when necessary. Since CCW is the primary and sole water provider, mirroring their drought response ensures consistency across our service area and enhances compliance with critical water conservation measures. Please note that STWA has the wholesale provider for NWSC will enact similar measures to follow CCW.

Analysis:

The Corporation follows the city's four (4) stage drought contingency plan, which is crucial for monitoring the water system and informing consumers about restrictions based on water levels. The adopted DCP involves calculations/revisions covering the topics of water usage and prospective amounts to reduce consumptions. As currently reported:

- **Regional Drought Conditions:** Severe drought conditions are impacting the entire Coastal Bend region, making water conservation essential to sustaining limited resources.
- **CCW (STWA) Actions:** As our water provider, CCW/STWA is implementing Stage 3 restrictions, which include reducing water consumption across all customer categories and applying penalties for non-compliance starting January 1, 2025.
- **Implications:** Aligning with Stage 3 restrictions ensures NWSC's efforts are integrated with the broader regional response, minimizing potential confusion among our customers.

Staff Recommendation:

In light of the severe drought conditions and Corpus Christi Water's and by default the South Texas Water Authority's pending implementation of Stage 3 water restrictions, it is recommending the NWSC Board of

Directors enact Stage 3 of our Drought Contingency Plan, effective immediately to reflect the region's implementation.

Recommendations:

1. Immediate communication with all NWSC customers and implementation of Stage 3.
2. Issuing warnings throughout December to customers to reduce water consumption.
3. Monitor for non-compliance of our Drought Contingency Plan beginning January 1, 2025.

Board Action:

Approve the enactment of Stage 3 of the NWSC Drought Contingency Plan effective immediately, to align with CCW and address ongoing drought conditions.

Summary:

Given the unprecedented drought conditions and CCW's leadership in activating Stage 3 water restrictions, NWSC must take immediate and coordinated action to ensure the sustainability of our water resources. This step is critical to protecting our community's water supply and supporting regional conservation efforts.

City of Corpus Christi (CCW) Press Conference on Stage 3 Drought Contingency

From jmarez@STWA.org <jmarez@STWA.org>

Date Fri 12/13/2024 9:30 AM

To stwagraveley@gmail.com <stwagraveley@gmail.com>; Balde Garcia <bgarcia@gtek.biz>; 'Sherry Zimmerman' <nwsczimmerman@gmail.com>

Cc Joella Wagner <jwagner@stwa.org>; Frances DeLeon <fvrosales@stwa.org>; Patrick Sendejo <cp@stwa.org>; vgutierrez@stwa.org <vgutierrez@stwa.org>

Bcc josegraveley@yahoo.com <josegraveley@yahoo.com>; Frances A Garcia <francesagarcia@yahoo.com>; Imelda Garza <igarza@texasfcu.org>; Kathleen Lowman <klowman126@aol.com>; Rudy Galvan <rudybodyman@yahoo.com>; Patsy Rogers <rnorpat2@gmail.com>; Angela Nichole Pena <angietx34@gmail.com>; Joe Morales <joe.morales38@yahoo.com>; Arturo Rodriguez <artrodriguez713@gmail.com>; James Fischer <rwscfischer@gmail.com>; Robert Zavala Jr <rwsczavalajr@gmail.com>; Robert Garza <rwscgarza@gmail.com>; Oliver Hinojosa <rwschinojosa@gmail.com>; Frank Escobedo <rwscescobedo@gmail.com>; Tisha Jones <rwscjones@gmail.com>; Mrs. Jones <3DFree@pm.me>; 'Baldemar Garcia' <rwscgarcia@gmail.com>; 'Sherry Zimmerman' <sannezimmerman@gmail.com>; 'Samuel Arciniega Jr' <nwscarciniega@gmail.com>; 'Samuel Arciniega Jr' <sam.arc0219@gmail.com>

 2 attachments (2 MB)

Stage 3 Invite (1).png; ONS Locator Map (1).png;

Directors,

On Monday, December 16th at 11am the City of Corpus Christi/Water Department (CCW) will host a press conference regarding their system's transition to Stage 3 water restrictions. I have been invited to join other area Wholesale Water systems to attend and represent our three boards (STWA, RWSC & NWSC). I am including the flyers in case you would like to attend as well.

Both Water Supply Corporations (Ricardo & Nueces) will have the Stage 3 Drought Contingency Plan (DCP) language to enact during their end of year meetings next week.

We will keep you posted as conditions change.

Sincerely,

John Marez
STWA/RWSC/NWSC
Cell: 361-813-2105



Combined Western Lake Levels Now Below 20% Capacity

City Will Continue to Monitor Lake Levels Ahead of Stage 3 Water Restrictions

December 11, 2024

CORPUS CHRISTI, TX - The combined levels for the City of Corpus Christi's primary Western water sources, Lake Corpus Christi and Choke Canyon Reservoirs, are at 19.9% capacity. Under Section 5 of the City's Drought Contingency Plan, the authority to declare Stage 3 water restrictions lies with the City Manager when combined lake levels drop below 20%.

The City will continue to monitor the lake levels and anticipates declaring Stage 3 of the City's Drought Contingency Plan on Monday, December 16.

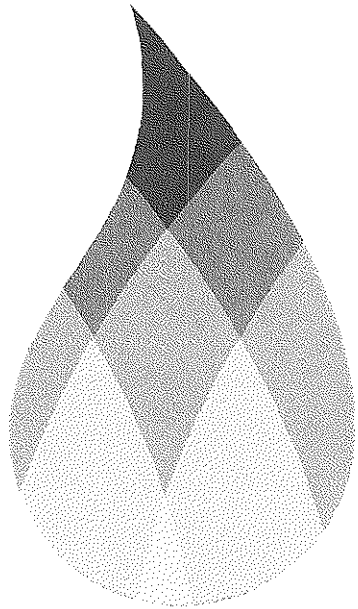
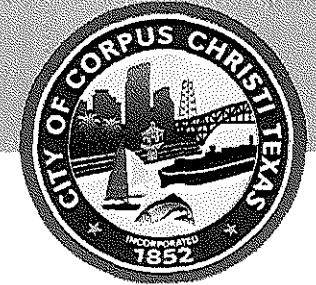
The Coastal Bend is among several areas in Texas experiencing severe drought conditions. Governor Greg Abbott has issued a disaster declaration for 76 counties, including Nueces County, instructing state agencies to make necessary resources available to cope with the disaster. The City is currently evaluating how the declaration may be used to expedite the ability to bring on additional water sources.

Once Stage 3 is declared, all customers should reduce their water consumption. For the remainder of December, warnings will be issued as needed to those not adhering to required water restrictions. Citations will begin on January 1, 2025.

The water restrictions apply to all Corpus Christi homeowners, apartment buildings, institutional facilities such as schools, churches, City properties, commercial businesses, and industry.

Every Drop Counts, Conserve Corpus Christi.

DROUGHT STATUS: STAGE 3



NEWS CONFERENCE

MONDAY, DECEMBER 16

11:00 A.M.

O.N. STEVENS WATER TREATMENT PLANT
13101 LEOPARD ST

CCW

EVERY DROP COUNTS
CONSERVE, CORPUS CHRISTI

**NUECES WATER SUPPLY CORPORATION
WATER CONSERVATION AND DROUGHT CONTINGENCY PLAN, 2024
Amended and Adopted July 16, 2024**

PART I—WATER CONSERVATION PLAN

Introduction

The Nueces Water Supply Corporation provides service to approximately 3,276 residents located in western Nueces County. The Corporation was created in 1983. Construction of facilities to service customers was completed in 1986. The rural system was built using a combination of grant and loan funds from the United States Department of Agriculture, formerly referred to as the Farmer's Home Administration. At that time, the system consisted of about 125 miles of PVC pipe ranging in size from 10" to 2" with a customer base of approximately 250 service connections. Since then, the distribution system has been expanded through various colonia projects and the customer base nearly quadrupled in size.

The Corporation supplies water for municipal, industrial, and institutional use in the rural areas surrounding Agua Dulce, Banquete, Driscoll, Bishop, and southwest of Robstown. Treated water is purchased on a wholesale basis from the South Texas Water Authority (STWA). STWA purchases its water from the City of Corpus Christi whose supply is from Lake Corpus Christi, Choke Canyon Reservoir System, Lake Texana and the lower Colorado River. Water from those sources is treated at the O.N. Stevens Water Treatment Plant before entering STWA's Regional Transmission System and being delivered to six (6) pump station facilities that service the Corporation. Nueces Water Supply Corporation does not supply wastewater service.

Surface supplies available to the Corporation by virtue of its contract with STWA and its contract with the City of Corpus Christi includes the following: Lake Corpus Christi stores 256,339 acre-feet of water, Choke Canyon Reservoir stores 662,821 acre-feet of water, and the 101-mile-long Mary Rhodes Pipeline delivers water through a 64-inch pipeline from Lake Texana near Edna, Texas. In 1993, the City of Corpus Christi entered into a contract with the Lavaca-Navidad River Authority to purchase 41,840 acre-feet of water per year. The City is currently contracted to divert 31,440 acre-feet after the LNRA recalled 10,400 acre-feet. Approximately 40 to 70 percent (40-70%) of the water used by the City of Corpus Christi is from Lake Texana through the Mary Rhodes Pipeline. In addition, in order to meet the demand of a growing Coastal Bend Region, the City purchased senior water rights to 35,000 acre-feet of water per year from the Garwood Irrigation Company which is part of the Lower Colorado River supply. Construction of Phase 2 of the Mary Rhodes Pipeline to access that water supply is now complete.

According to the City of Corpus Christi's Water Conservation Plan, the City diverts raw water from the Nueces River and Lake Texana into the O.N. Stevens Water Treatment Plant where it

passes through screens to remove large floating objects such as leaves, branches, and fish. From there, the water is treated to remove suspended particles and disinfected for human consumption. Approximately 23 billion gallons of water are treated each year. The O.N. Stevens Water Treatment Plant has a rated capacity of 167 million gallons per day, well above the peak summer demand of 100 million gallons per day.

According to the City of Corpus Christi's Water Conservation Plan and annual Consumer Confidence Reports, the City's Water Department operates in full compliance with all state and federal requirements. The City's Water Department also maintains a water laboratory.

The service area of the Nueces Water Supply Corporation is located within the Region N Planning area and the Corporation has provided a copy of this water conservation plan to the Region N Planning Group. The Corporation stays apprised of water conservation and supply issues through the General Manager's participation in the Coastal Bend Regional Water Planning Group.

Demand Profile

The Nueces Water Supply Corporation serves retail customers. As of December 2023, the Corporation has 1,092 service connections. The Corporation's 5-Year average water demand was approximately 160 million gallons. The monthly peak demand in the last 5 years was 20,233,200. The largest percentage of water use is from single-family residential usage. However, in 2023 out of 1,092 customers there were two (2) multi-family residential, three (3) institutional, twenty (20) commercial, and five (5) industrial customers that account for 0.7 MG, 30.8 MG, 5.5 MG and 2.3 MG of water use respectively.

Five-year and Ten-year targets

The Nueces Water Supply Corporation water conservation plan is focused on maintaining the current per capita per day usage. In 2013, the 5-year average per capita per day usage was 118 gallons. In 2017, the 5-year (2012-2016) average per capita per day usage was 150 gallons, but with an adjustment for the two (2) institutional connections, it was 116 gallons. The 2016 gpcd was 115 gallons. In 2024, the 5-year (2019-2023) average per capita per day usage is 144 gallons and 99 gallons when adjusted for the institutional connections. The 2023 gpcd was 96 gallons. The Board believes that the current 5-year average amount is well below the recommended statewide level of 140 gpcd and the customers (members) of the Corporation are making a concerted effort to use water in an efficient and non-wasteful manner. This is evident from the per capita usage figure in 2023. The 5-year and 10-year targets are to decrease total per capita per day usage by one percent each year.

The Corporation monitors unaccounted-for water. Table 1 provides figures on the amounts of water purchased and accounted-for as well as the unaccounted-for gallons for the last five years.

Fiscal Year	Gallons Purchased	Gallons Sold	Unaccounted-for Gallons	Percentage of Loss
2019	188,176,640	172,307,350	20,022,840	16.44%
2020	194,931,980	174,157,820	18,369,890	15.07%
2021	146,195,007	138,041,300	12,089,791	8.41%
2022	137,493,200	114,882,060	12,089,791	11.59%
2023	144,101,995	123,316,430	19,278,304	16.89%
AVG for 2019-2023	162,179,764	144,540,992	14,729,607	13.68%

Leak Detection and Repair:

In addition to the monthly water loss report and daily metering, field personnel periodically “drive-out” the routes of the lines. Major portions of the Corporation’s waterlines are located in rural farmlands; therefore, leaks that are not detected by employees are reported by landowners or tenant farmers. Changes in flow volumes from the daily readings also warn field technicians to a possible leak. STWA’s master meters (wholesale) are tested annually by an outside company specializing in testing larger meters. In compliance with AWWA recommendations, for deviations from 100% that are greater than 2% (over or under), the meter is re-calibrated. Meters are also tested and if necessary repaired or replaced prior to the annual test date in the event the meter is exhibiting a malfunction.

Reservoir Systems Operations Plan:

The Nueces Water Supply Corporation does not own or operate any reservoir systems. The City of Corpus Christi is the responsible entity overseeing those tasks since the Corporation purchases water from STWA and STWA purchases water from the City of Corpus Christi.

Conservation Strategies:

- (A) Conservation-Oriented Water Rates—as mentioned in other sections, the Corporation has adopted an inclining block rate schedule.
- (B) The Corporation does not sell water to any customers for irrigation purposes; therefore, the Corporation does not have any programs to assist agricultural customers in the development of conservation pollution prevention and abatement plans.
- (C) The Corporation does not provide wastewater service; therefore, it does not have any programs for reuse and/or recycling of wastewater and/or graywater.

Future Contracts:

The Nueces Water Supply Corporation recognizes that a requirement in every future water supply contract entered into or renewed after official adoption of the water conservation plan, and including any contract extension, stipulates that each successive wholesale customer develop and implement a water conservation plan. If the customer intends to resell the water, then the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures. At this time, the Corporation has only one (1) customer that is purchasing water by contract for re-sale. The Corporation will include those stipulations in any amendment or extension of that contract.

Implementation and Enforcement:

Attached, as Appendix A, is a copy of the resolution adopted by the Nueces Water Supply Corporation Board of Directors adopting the Water Conservation and Drought Contingency Plan.

Coordination with the Regional Water Planning Group:

Attached as Appendix B is a copy of the cover letter sent to the Nueces River Authority, administrator of the Coastal Bend Regional Water Planning Group.

Review and Update:

Beginning in May of 2009, the Nueces Water Supply Corporation reviewed and updated its Water Conservation and Drought Contingency Plan and will continue to review and update every five years. The Plan was also updated in 2013 and 2017 in response to the City of Corpus Christi modifying its Drought Contingency Plan. The most recent update was in June 2019 when the Plan was again updated in order to meet compliance with TCEQ rules. Periodic updates will occur, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. Therefore, the next review is scheduled to occur no later than May 1, 2029, and every five years after that date.

Best Management Practices

In recent years, the Corporation has reinforced conservation measures by sending conservation brochures and reminders in the form of pencils, magnets, and leak detection tablets for toilets. In addition, student-age children serviced by the Corporation benefit from the Major Rivers program provided by the STWA, the Corporation's wholesale provider and contracted management team. The Corporation has and will continue to utilize Best Management Practices (BMPs) to insure that

water is not wasted. Six (6) BMPs have been implemented as part of the Corporation's ongoing water conservation efforts.

1. System Water Audit and Water Loss

A. Description

All water is metered as it leaves the STWA's six (6) pump stations that serve the Corporation's customers. Water is metered for all retail customers. Wholesale meter readings and flow volumes are recorded daily via the STWA's Supervisory Control and Data Acquisition system. A water loss report is calculated after the monthly meter reading date on the 10th of the month. The unaccounted-for water is tracked by comparing wholesale water entering the distribution system to the retail billing records and accounting for water used for flushing and construction and estimated amounts due to leaks. In 2023, the loss was 16.89%. The percentage loss for the previous four (4) years has been 16.44%, 15.07%, 8.41%, and 11.59%. The Corporation attempts to maintain unaccounted water rates at or below 10 percent through leak detection and repairs as well as a meter retrofit program.

B. Implementation

In 2008 the NWSC Board approved a major expenditure by replacing all of the retail meters with remote-read meters capable of tracking each customer's daily usage as well as recording any meter tampering. Despite this major investment, staff continues to perform water audit and water loss tasks in a systematic and periodic process. Each month, meter readers and billing staff work together to identify meters that are not working properly. A Service Order is written in triplicate. Meters are replaced at which time a Work Order (also in triplicate) is done listing the new meter number and pertinent billing information. These Work Orders are used by STWA (the Corporation's contracted management) to generate the Corporation's monthly Repair Invoice. Most recently, in 2020, the Corporation purchased an additional 114 remote-read meters to replace meters at three subdivisions that require manual reading.

C. Schedule

The meter retrofit program is already implemented and will continue to be utilized.

D. Documentation

To track this BMP, the Corporation maintains the following documentation:

1. Each customer's (member) file contains a copy of the service order that initiates the process.
2. Service orders are filed in numerical order.
3. A copy of the Service Order is attached to the Work Order once the meter is "changed out".

4. Work Orders are filed with the Monthly Invoice.
5. Work Order copies are also filed in numerical order.
6. A copy of the Work Order is placed in the customer's (member) file.

E. Determination of Water Savings

Monthly water loss reports are compared to the number of meters that have been changed out for the month and those service orders yet to be completed.

2. Metering of All Connections

A. Description

The purpose of this BMP is to ensure that all water is accounted.

B. Implementation

The Corporation utilizes a 100% meter policy to insure that the maximum amount of consumption is recorded. The Corporation, as stated in the previous section, will continue its meter retrofit program and has for many years enlisted the practice recommended by the AWWA of notifying customers when it appears a leak exists on the customer's side of the meter.

The meter program includes the following:

1. Required metering of all connections.
2. An application for service that requires the customer (member) to provide the necessary information to determine the installation of adequate, proper-sized meters as determined by a customer's current water use patterns.
3. Direct utility metering of multi-unit/non-wholesale accounts.
4. Metering of all governmental facility service connections.
5. Use of construction meters.
6. Implementation of the State requirements in HB 2404, passed by the 77th Legislature Regular Session and implemented through Texas Water Code 13.502, which requires all new apartments be either directly metered by the utility or sub-metered by the owner.
7. Regular replacement of meters.
8. Meter reading in which readings are estimated only in cases of flooded conditions.

C. Schedule

The Corporation has already implemented this BMP, and will continue to utilize this BMP.

D. Documentation

The Corporation maintains records of the customer's (member) application and all service requests for construction. Information on all services is summarized in an Annual Report to the Board.

E. Determination of Water Savings

The Corporation reviews overall water loss and the dollars associated with unaccounted-for water during its annual fiscal audit performed by an outside consultant.

3. Water Conservation Pricing

A. Description

The Corporation's most recent rate increase occurred in 2024 when the monthly minimum became \$32.00 for zero gallons on the smallest residential size meter (5/8" x 3/4"). In addition, the Corporation's inclining block schedule is meant to encourage conservation. A copy of the current rate structure is attached as Appendix C. The basic rate structure is designed to recover the cost of providing service and billing for water service. The rates include a consumption charge based upon actual gallons metered so that increasing water consumption results in a larger bill for the customer. Conservation pricing provides incentives to customers to reduce both average and peak use.

B. Implementation

The Corporation is of the opinion that current rates are, in fact, cost of service rates. However, periodically, staff conducts a rate study to determine whether the fixed and variable costs are appropriately allocated between the monthly minimum and per thousand gallon charges. The information is presented to the Board of Directors. The Board then considers factors including but not limited to infrastructure needs, current construction projects, projected cost of water from STWA/City of Corpus Christi and current Reserve Fund balance.

C. Schedule

The Corporation will perform evaluations as the need warrants.

D. Documentation

To track this BMP, the Corporation maintains the following documentation:

1. A copy of its adopted rate tariff that follows the guidelines of this BMP;
2. Billing and customer records that include annual revenues by customer class and revenue derived from minimums and usage by customer class for the reporting period;
3. Monthly customer numbers and water consumption by customer class; and
4. Cost of service analyses done by staff through the years.

E. Determination of Water Savings

In the 40 years of operations, a large percentage of the Corporation's growth has been associated with grant projects done in partnership with Nueces County. These projects have been primarily associated with providing first-time service to residents living in colonias. Therefore, it is probable that there are socio-economic factors as well as more limited types of uses in a rural environment versus that of a large, incorporated city. Staff believes that the majority of rural usage is associated with indoor, basic needs (bathing, washing clothes, cooking, flushing toilets) versus that of outdoor watering.

4. Prohibition on Wasting Water

A. Description

Enforceable actions by a non-profit water supply corporation against a party that is wasting water is now possible by adoption of penalties as part of the water supply corporation's rate tariff. HB 1152 recently granted this authority. At this time, the Board of Directors is considering the necessary amendments to its tariff. However, the Corporation encourages all its customers and members to avoid:

1. Wasting water during irrigation;
2. Allowing outside faucets to leak;
3. Allowing service lines to leak (on the customer side of the meter);
4. Allowing sprinkler systems to leak; and
5. Installing non-recycling decorative water fountains.

Wasting water during irrigation includes:

1. Water running along the road;
2. Irrigation heads or sprinklers spraying directly on paved surfaces such as driveways, parking lots, and sidewalks in public right-of-ways;
3. Operation of an irrigation system with misting heads caused by water pressure higher than recommended design pressure for the heads, or broken heads;
4. Spray irrigation during summer months between the hours of 10 a.m. and 6 p.m.

B. Implementation

This BMP is implemented through educational brochures and notices.

C. Schedule

The Corporation has used notices and brochures in the past and will continue to do so in the future.

D. Documentation

To track this BMP, the Corporation maintains the following documentation:

1. Copies of water waste prohibition brochures and notices sent to customers/members; and
2. Copies of notices sent as a requirement of drought notices triggered by the City of Corpus Christi.

E. Determination of Water Savings

It is difficult to quantify and determine the water savings from this BMP due to the sporadic nature of these types of activities. However, pertinent notices and future actions taken by the Corporation will be documented by written correspondence to customers/members and filed for record. Any noticeable changes in consumption will also be of record.

5. And 6. Public Information and School Education

A. Description

The Corporation uses a limited number of media resources to notify customers on the importance of water conservation. This is due to the size and resources of the Corporation as well as the low gpcd. The Corporation recognizes the importance of public awareness and regional water resources.

B. Implementation

The Corporation, being a small rural system, is limited in the amount of funds that can be expended in public education and outreach. This factor coupled with the per capita per day gallon usage of 99 which is well below the state recommended goal of 140 gpcd serves to reinforce the modest size of the “media” campaign.

1. Printed Brochures—from time to time the Corporation has utilized printed brochures for topics such as Xeriscape, proper outdoor watering, and inside the home water savings tips.
2. School Education—through its purchase of water from STWA, the Corporation supports the Major Rivers Program that was initiated in 1991 and revised for the 2003-2004 school year. Major Rivers is geared for 4th and 5th grade curriculum and exceeds the requirements of Texas Essential Knowledge and Skills (TEKS). In addition to general information on water resources in the State of Texas, the program focuses on conservation, supply, treatment, and distribution. The self-contained program offers academic and hands-on activities in math, language arts, science, and social studies, with teacher’s guide geared to the interdisciplinary curriculum, as well as an

introductory video and home information leaflets. The program includes pre- and post-test evaluations.

STWA, wholesale supplier of the Corporation and provider of the Major Rivers program, maintains the following documentation:

1. Number of schools provided the information;
2. Copies of program marketing and educational materials; and
3. Annual budget for school education programs related to conservation.

C. Schedule

The Corporation has used and will continue to use these methods to educate and reach customers regarding the importance of water conservation and wise use of water.

D. Documentation

To track the progress of this BMP, the Corporation maintains records and copies of all brochures and educational information sent to customers:

E. Determination of Water Savings

Water savings associated public information efforts are difficult to quantify. However, the Corporation believes that education is instrumental in efficient use of water.

PART II—DROUGHT CONTINGENCY PLAN

The following Part II of the Water Conservation and Drought Contingency Plan is Nueces Water Supply Corporation's Drought Contingency Plan adopted by Board resolution on July 16, 2024.

Section I: Declaration of Policy, Purpose, and Intent

In order to conserve the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use and sanitation, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of water supply shortage or other water supply emergency conditions, the Nueces Water Supply Corporation hereby adopts the following regulations and restrictions on the delivery and consumption of water.

The Nueces Water Supply Corporation will include a provision in every wholesale water contract entered into or renewed after adoption of the Plan, including contract extensions, that in the case of a shortage of water resulting from drought, the water to be distributed shall be divided in accordance with Texas Water Code, §11.039. In addition, in the event that the triggering criteria specified in the Plan have been met, the General Manager is hereby authorized to initiate allocation of water supplies on a pro rata basis in accordance with Texas Water Code, §11.039.

Water uses regulated or prohibited under this Drought Contingency Plan (the Plan) are considered to be non-essential and continuation of such uses during times of water shortage or other emergency water supply condition are deemed to constitute a waste of water which subjects the offender(s) to penalties as defined in Section XI of this Plan.

Section II: Public Involvement

Opportunity for the public to provide input into the preparation of the Plan was provided by the Nueces Water Supply Corporation by means of a public meeting held in compliance with the Open Meetings Act.

Section III: Public Education

The Nueces Water Supply Corporation will periodically provide the public with information about the Plan, including information about the conditions under which each stage of the Plan is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be provided by means of utility bill inserts.

Section IV: Coordination with Regional Water Planning Groups

The service area of the Nueces Water Supply Corporation is located within the Coastal Bend Regional Water Planning Group (Region N) and Nueces Water Supply Corporation will provide a copy of this Plan to the Coastal Bend Regional Water Planning Group.

Section V: Authorization

The General Manager, or his/her designee, is hereby authorized and directed to implement the applicable provisions of this Plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The Board of Directors shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in this Plan.

Section VI: Application

The provisions of this Plan shall apply to all persons, customers, and property utilizing water provided by the Nueces Water Supply Corporation. The terms “person” and “customer” as used in the Plan include individuals, corporations, partnerships, associations, and all other legal entities.

Section VII: Definitions

For the purposes of this Plan, the following definitions shall apply:

Aesthetic water use: water use for ornamental or decorative purposes such as fountains, reflecting pools, and water gardens.

Animal Unit (AU): An Animal Unit is equal to one (1) beef cow. The following livestock are equivalent based on the following multiplication factors:

Slaughter and feed cattle	1.0
Mature dairy cattle	1.42
Swine	0.40
Sheep or lambs	0.10
Goats	0.10
Horses	2.0
Turkeys	0.0182
Hens/broilers	0.0154

Commercial and institutional water use: water use which is integral to the operations of commercial and non-profit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, and office buildings.

Conservation: those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.

Customer: any person, company, or organization using water supplied by Nueces Water Supply Corporation.

Domestic water use: water use for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, sanitation, or for cleaning a residence, business, industry, or institution.

Even number address: street addresses, box numbers, or rural postal route numbers ending in 0, 2, 4, 6, or 8 and locations without addresses.

Industrial water use: the use of water in processes designed to convert materials of lower value into forms having greater usability and value.

Institutional water use: the use of water in processes designed to convert materials of lower value into forms having greater usability and use.

Landscape irrigation use: water used for the irrigation and maintenance of landscaped areas, whether publicly or privately owned, including residential and commercial lawns, gardens, golf courses, parks, and rights-of-way and medians.

Non-essential water use: water uses that are not essential nor required for the protection of public health, safety, and welfare, including:

- (a) irrigation of landscape areas, including parks, athletic fields, and golf courses, except otherwise provided under this Plan;
- (b) use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;
- (c) use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
- (d) use of water to wash down buildings or structures for purposes other than immediate fire protection;
- (e) flushing gutters or permitting water to run or accumulate in any gutter or street;
- (f) use of water to fill, refill, or add to any indoor or outdoor swimming pools or jacuzzi-type pools;
- (g) use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life;
- (h) failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s); and
- (i) use of water from hydrants for construction purposes or any other purposes other than fire fighting.

Odd numbered address: street addresses, box numbers, or rural postal route numbers ending in 1, 3, 5, 7, or 9.

Reservoir Capacity: the combined reservoir storage levels of Choke Canyon Reservoir and Lake Corpus Christi, as measured in percentage of the full combined volume.

Section VIII: Triggering Criteria for Initiation and Termination of Drought Response Stages

The Board of Directors shall monitor water supply and/or demand conditions as conditions develop and shall determine when conditions warrant initiation or termination of each stage of the Plan. Public notification of the initiation or termination of drought response stages shall be by means of direct mail to each customer.

A. Stage 1 – Mild Water Shortage Condition

Requirements for initiation – Customers shall be requested to voluntarily conserve water and adhere to prescribed restrictions on certain non-essential water uses described in Section X when the combined storage level of Choke Canyon Reservoir and Lake Corpus Christi declines below 40%.

Requirement for termination – Stage 1 of the DCP may be rescinded when the combined storage level of Choke Canyon Reservoir and Lake Corpus Christi increases above 50 percent.

B. Stage 2 – Moderate Water Shortage Condition

Requirements for initiation – Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for Stage 2 of this DCP when the combined Corpus Christi/Choke Canyon Reservoir storage level declines to below 30 percent.

Requirement for termination – Stage 2 of the DCP may be rescinded when the combined Corpus Christi/Choke Canyon Reservoir storage level increases above 40 percent. Upon termination of Stage 2, Stage 1 becomes operative.

C. Stage 3 – Critical Water Shortage Condition

Requirements for initiation – Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for Stage 3 of this DCP when the combined Lake Corpus Christi/Choke Canyon Reservoir storage level declines to below 20 percent.

Requirement for termination – Stage 3 of the DCP may be rescinded when the combined Lake Corpus Christi/Choke Canyon Reservoir storage level increases above 30 percent. Upon termination of Stage 3, Stage 2 becomes operative.

D. Stage 4 – Emergency Water Shortage Condition

Requirements for initiation – Customers shall be required to comply with requirements and restrictions for Stage 4 of this DCP when the General Manager, or designee, determines that a water supply emergency exists based on:

- A major water line breaks, or pump or system failures occur, which causes unprecedented loss of capability to provide water service; or
- Water production or distribution system limitations; or
- Natural or man-made contamination of the water supply source occurs.

Requirement for termination – The emergency water shortage condition may be rescinded when the General Manager, or designee, deems appropriate.

Section IX: Drought Response Stages

The General Manager, or designee, shall monitor water supply and/or demand conditions on a weekly basis and, in accordance with the triggering criteria set forth in Section VIII of this Chapter, shall determine that a mild, moderate, critical, or emergency water shortage condition exists and shall implement the following notification procedures.

Notification of Corporation Customers and Members:

The General Manager, or designee, shall notify its customers for every change in drought stage status by any or all of the following:

- Publication in local periodicals
- Notice on the monthly billing
- Public Service Announcements
- Signs posted in public places
- Posting on the Corporation’s website, www.nueceswsc.com

Additional Notification:

The General Manager, or designee shall, at a minimum, notify directly, or cause to be notified directly, the following individuals and entities for every change in drought stage status:

- The Corporation Board of Directors
- Major water users (such as industries)
- Critical water users
- Texas Commission on Environmental Quality (TCEQ) – note TCEQ executive director MUST be informed within five (5) business days of mandatory water use restrictions being imposed

X. Drought Best Management Practices Per Stage

A summary of water use reduction targets for each drought stage response is presented in the following table. Further discussion on best management practices and implementation practices associated with each stage of response is included below. During Stages 2, 3, and 4, requests for exceptions may be presented to the General Manager or designee.

Drought Stage Response	CCR/LCC Combined Reservoir Storage Level	Target Demand Reduction Levels
Stage 1 – Mild	<40% of CCR/LCC Combined Level	10%
Stage 2 – Moderate	<30% of CCR/LCC Combined Level	20%
Stage 3 – Critical	<20% of CCR/LCC Combined Level	30%
Stage 4 – Emergency	Not Applicable	50%

A. Stage 1 Response – MILD Water Shortage Conditions

Target: Achieve a *voluntary* 10% reduction in daily treated water demand relative to treated water demand with the water use restrictions below.

Best Management Practices for Supply Management:

Under Stage 1, the Corporation will:

1. Use more repair crews if necessary to allow for a quicker response time for water-line leak repair; and
2. Begin monitoring customers' compliance with Stage 1 restrictions during the course of field personnel's daily rounds.

Water Use Restrictions for Demand Reduction:

The following water use restrictions shall apply to all persons during Stage 1:

1. Water customers are requested to voluntarily limit the irrigation of landscaped areas to **once per week**. The General Manager, or designee, will determine the watering schedule.
2. Use of water from hydrants shall be limited to fire fighting, related activities, or other activities necessary to maintain public health, safety, and welfare, except that use of water from designated fire hydrants for construction purposes may be allowed under special permit from the Corporation Board of Directors.
3. Use of water for the irrigation of golf course greens, tees, and fairways is prohibited except on designated watering days. However, if the golf course utilizes a water source

other than that provided through Corporation infrastructure, the facility shall not be subject to these regulations.

4. Water customers are requested to practice water conservation and to minimize or discontinue water use for non-essential purposes.
5. The use of water to maintain integrity of building foundations is limited to designated watering days and is only permitted by use of hand-held hose or drip irrigation.

B. Stage 2 Response – MODERATE Water Shortage Conditions

Target: During Stage 2, achieve a 20% reduction in daily treated water demand relative to treated water demand with the water use restrictions below.

Best Management Practices for Supply Management:

In addition to the best management practices for supply management listed under Stage 1, the Corporation will also do the following during Stage 2:

1. Eliminate the flushing of water mains unless required for decontamination and/or public safety; and
2. Review customers' water usage for compliance based on the previous month's water use and notify violators verbally or in writing as the situation dictates.

Water Use Restrictions for Demand Reduction:

All requirements of Stage 1 shall remain in effect during Stage 2 except as modified below. Under threat of penalty for violation, the following water use restrictions shall apply to all persons during Stage 2:

1. Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to **once every other week**. The watering schedule will be determined by the General Manager or designee. Customers will be made aware of their designated watering day in accordance with Section IX. However, irrigation of landscaped areas is permitted on any day if it is by means of a hand-held hose (with positive shutoff nozzle), a faucet filled bucket or watering can of five (5) gallons or less, or drip irrigation system with a positive shutoff device. Exceptions for this restriction may be permitted, upon review and approval by the Corporation Board of Directors, for the following uses: new plantings (for up to 60 days), vegetable gardens, athletic playing fields, and botanical gardens. In addition, this restriction does not apply to customers irrigating with well water or an aerobic septic system. Customers irrigating with well water or an aerobic septic system must apply for a permit to be prominently posted on the premises within two (2) feet of the street number located on the premises.

2. Use of water for the irrigation of golf course greens, tees, and fairways is prohibited. The watering of greens and tees is limited to once every other week unless the golf course utilizes a water source other than that provided through Corporation infrastructure or done by means of hand-held hoses, hand-held buckets, or drip irrigation.

C. Stage 3 Response – CRITICAL Water Shortage Conditions

Target: During Stage 3, achieve a 30% reduction in total daily treated water demand relative to treated water demand with the water use restrictions below.

Best Management Practices for Supply Management:

In addition to the best management practices for supply management listed under Stage 2, the Corporation will also do the following during Stage 3:

1. Upon written notice, disconnect the water meters of willful violators if absolutely necessary to prevent the deliberate wasting of water.

Additional Water Use Restrictions and Guidelines for Demand Reduction that may be implemented based on City of Corpus Christi implementing stricter restrictions:

1. Irrigation of landscaped areas shall be **prohibited at all times**.
2. Use of water to wash any motor vehicle, motorbike, boat, trailer, or other vehicle not occurring on the premises of a commercial car wash stations and not in the immediate interest of public health, safety, and welfare is prohibited. Vehicle washing may be done at any time on the immediate premises of a commercial car wash. Further, such washing may be exempted from these regulations upon review by the General Manager if the health, safety, and welfare of the public are contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables. Washing of boats and/or flushing of boat motors is permitted upon immediate exit of water body.
3. The filling, refilling, or adding of water to swimming pools, wading pools, and jacuzzi-type pools, and water parks (unless non-city, alternative source) is prohibited.
4. The use of water to maintain the integrity of a building foundation is still permitted on the designated Stage 3 watering day and shall be done by hand or drip irrigation method.
5. Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life.
6. The following uses of water are defined as non-essential and are prohibited:

- a. Wash-down of any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
 - b. Use of water to wash down buildings or structures for purposes other than immediate fire protection without permit granted by the General Manager or designee;
 - c. Use of water for dust control without permit without permit granted by the General Manager or designee;
7. No application for new, additional, expanded, or increased-in-size water service connections, meters, service lines, pipeline extensions, mains, or water service facilities of any kind shall be approved, and time limits for approval of such applications are hereby suspended for such time as this drought response stage shall be in effect.
 8. For residential and multi-unit customers, a drought surcharge of up to and including 100% of the total monthly water bill over the monthly allocation may be added to the customers' bill to deter discretionary water use, as explained in Section XI.

D. Stage 4 Response – EMERGENCY Water Shortage Conditions

Target: During Stage 4, achieve a 50% or greater reduction in daily treated water demand relative to treated water demand with the below water use restrictions. Surcharges and reduced allocations are enforceable during Stage 4 water shortage conditions, as described in Section XIII.

During emergency conditions such as system outage or supply source contamination, or supply sources draining empty, alternative water sources and/or alternative delivery mechanisms may be necessary with prior approval of the General Manager or designee. For emergency water shortage conditions associated with contamination of Nueces Basin stored supplies, the Corporation, under the General Manager or designee's direction, may cease receiving its normal supply of water from the South Texas Water Authority and City of Corpus Christi. Temporary or additional supplies of water may be available from Lake Texana on a short-term basis to meet essential water needs. For emergency water shortage conditions associated with contamination of Lake Texana supplies, the Corporation, may also experience large reductions in supplies from the South Texas Water Authority and City of Corpus Christi.

Best Management Practices for Supply Management:

In addition, the Corporation will do the following:

1. Call the 10 largest water customers in the area affected by the emergency condition, and if necessary, use runners in key areas to begin spreading the message of a major outage.

Water Use Restrictions for Demand Reduction:

During Stage 4, all requirements of Stage 1, 2, and 3 shall be in effect except as modified below:

1. Irrigation of landscaped areas is absolutely prohibited.
2. Use of water to wash any motor vehicle, motorbike, boat, trailer, or other vehicle is absolutely prohibited.
3. Associated uses of water not related to business process which are discretionary, such as equipment washing, shall be deferred until the Stage 5 4 emergency has been terminated.

Optional Measure:

During Stage 4, the following measure is an optional water use restriction that may be implemented by the General Manager, or designee, with Board approval, as conditions warrant:

1. For residential and multi-unit customers, a drought surcharge of up to and including 100% of the total monthly water bill over the monthly allocation may be added to the customers' bill to deter discretionary water use, as explained in Section XI.

XI. Surcharges for Drought Stages 3 – 4 and Service Measures

A. General

1. The surcharges established herein are solely intended to regulate and deter the use of water during a period of serious drought in order to achieve necessary water conservation. The Corporation expressly finds that the drought poses a serious and immediate threat to the public and economic health and general welfare of this community, and that the surcharges and other measures adopted herein are essential to protect said public health and welfare.
2. This section, and the surcharges and measures adopted herein are an exercise of the Corporation's regulatory and police power, and the surcharges and connection fees are conservation rates intended to meet fixed costs as a result of lost revenue.
3. With Board approval, the General Manager is authorized to determine trigger points or allocations and surcharges during Stages 3 and 4 Emergency Water Shortage conditions.
4. A customer may appeal an allocation or drought surcharge triggering point established under this Section to the General Manager or designee on grounds of unnecessary hardship, through the process outlined in Section XII.
5. Drought surcharge funds will first be applied towards annual debt service as reflected in the Corporation's operating budget to offset revenue loss due to drought conditions. Additional funds will be reported to the Board for Board direction.

B. Residential water customers, who are not billed through a master water meter.

1. A monthly base amount of 4,000 gallons shall be established as a trigger point for each customer. Water consumption up to and including this amount will not include a drought surcharge.
2. Above the 4,000 gallon consumption trigger point, with Board approval, a drought surcharge shall be added up to and including 100% of the customer's total monthly water bill over the allocation.

C. Residential customers who are billed from a master water meter.

1. Once Stage 2 condition has been declared, property managers of multi-tenant units shall notify the General Manager of the number of residential units in their facility for determination of allocations. Until so notified, the Corporation shall calculate the allocation based on two residential units per master water meter. A monthly base amount of 4,000 gallons shall be established as a trigger point for each residential unit.
2. When consumption for the month is less than or equal to 4,000 gallons times the number of residential units, there will be no surcharge.
3. With Board approval, when consumption is above the 4,000 gallons times the number of units, a drought surcharge shall be added up to and including 100% of the customer's total monthly water bill over the allocation.
4. The customer is responsible for passing the demand charge onto the tenant.

D. Commercial or institutional customer

1. A monthly water usage allocation shall be established by the General Manager or designee for each commercial or institutional customer.
2. Method of establishing allocation:
 - a. When the combined reservoir capacity is less than 20% of total capacity (Stage 3), the commercial or institutional customer's allocation shall be 90 percent of the customer's usage for the corresponding month's billing period during previous 12 months prior to the implementation of Stage 2.
 - b. If the customer's billing history is shorter than 12 months, the monthly average for the period for which there is a record shall be used for any monthly period for which no history exists.
 - c. Provided, however, a customer, 90 percent of whose monthly usage is less than 6,000 gallons, shall be allocated 6,000 gallons.
 - d. The General Manager shall give best effort to see that notice of each commercial or institutional customer's allocation is mailed to such customer.
 - e. If, however, the customer does not receive such notice, it shall be the customer's responsibility to contact the Corporation's Office to determine the allocation, and the allocation shall be fully effective notwithstanding lack of receipt of written notice.

- f. Upon request of the customer or at the initiative of the General Manager, the allocation may be reduced or increased,
 - (1) if one nonresidential customer agrees to transfer part of its allocation to another nonresidential customer, or
 - (2) if other objective evidence demonstrates that the designated allocation is inaccurate under present conditions.

E. Industrial customers, who use water for processing.

- 1. A monthly water usage allocation shall be established by the General Manager or designee for each industrial customer, which uses water for processing (e.g., an industrial customer).
- 2. Method of establishing allocation.
 - a. When the combined reservoir capacity is less than 20% of total capacity (Stage 3), the industrial customer allocation shall be 90 percent of the customer's usage for the corresponding month's billing period during the previous 12 months prior to the implementation of Stage 2.
 - b. If the customer's billing history is shorter than 12 months, the monthly allocation shall be 1/12 of 90% of the customer's maximum annual contracted amount until 12 months of billing history are established. However if the industrial customer does not have a water contract and does not have at least 12 months of billing history, then the new industrial customer will provide data regarding expected water use and Corporation will determine allocation based on 90% of expected use to determine initial allocation until 12 months of billing history are established.
 - c. The General Manager shall give his/her best effort to see that notice of each industrial customer's allocation is mailed to such customer.
 - d. If, however, the customer does not receive such notice, it shall be the customer's responsibility to contact the Corporation's Office to determine the allocation, and the allocation shall be fully effective notwithstanding lack of receipt of written notice.
 - e. Upon request of the customer or at the initiative of the General Manager, the allocation may be reduced or increased, if:
 - 1. The designated period does not accurately reflect the customer's normal water usage because customer had shut down a major processing unit for overhaul during the period.
 - 2. The customer has added or is in the process of adding significant additional processing capacity.
 - 3. The customer has shut down or significantly reduced the production of a major processing unit.
 - 4. The customer has previously implemented significant permanent water conservation measures.

5. The customer agrees to transfer part of its allocation to another industrial customer.
6. Other objective evidence demonstrates that the designated allocation is inaccurate under present conditions.

F. Commercial, institutional, and industrial customers shall pay the following surcharges:

1. Customers whose allocation is 6,000 gallons through 20,000 gallons per month:
 - a. \$5.00 per 1,000 gallons for the first 1,000 gallons over allocation.
 - b. \$8.00 per 1,000 gallons for the second 1,000 gallons over allocation.
 - c. \$16.00 per 1,000 gallons for the third 1,000 gallons over allocation.
 - d. \$40.00 for each additional 1,000 gallons over allocation.
2. Customers whose allocation is 21,000 gallons per month or more:
 - a. One times the block rate for each 1,000 gallons in excess of the allocation up through 5 percent above allocation.
 - b. Three times the block rate for each 1,000 gallons from 5 percent through 10 percent above allocation.
 - c. Five times the block rate for each 1,000 gallons from 10 percent through 15 percent above allocation.
 - d. Ten times the block rate for each 1,000 gallons more than 15 percent above allocation.
 - e. The surcharges shall be cumulative.
 - f. As used herein, "block rate" means the charge to the customer per 1,000 gallons at the regular water rate schedule at the level of the customer's allocation.

G. Nonresidential customer is billed from a master meter.

1. When a nonresidential customer is billed from a master meter which jointly measures water to multiple residential dwelling units (for example: apartments, mobile homes), the customer may pass along any surcharges assessed under this DCP to the tenants or occupants, provided that:
 - a. The customer notifies each tenant in writing:
 1. That the surcharge will be passed along.
 2. How the surcharge will be apportioned.
 3. That the landlord must be notified immediately of any plumbing leaks.
 4. Methods to conserve water (which shall be obtained from the Corporation).
 - b. The customer diligently maintains the plumbing system to prevent leaks.
 - c. The customer installs water saving devices and measures (ideas for which are available from the Corporation) to the extent reasonable and practical under the circumstances.

H. Water service to the retail water customer may be terminated under the following conditions:

1. Monthly residential water usage exceeds allocation by 4,000 gallons or more two or more times for any individual month after the implementation of Stage 3. Also, the two months need not be consecutive months.
2. Monthly water usage on a master meter which jointly measures water usage to multiple residential dwelling units exceeds allocation by 4,000 gallons times the number of dwelling units or more two or more times (which need not be consecutive months).
3. Monthly nonresidential water usage for a customer whose allocation is 6,000 gallons through 20,000 gallons exceeds its allocation by 7,000 gallons or more two or more times (which need not be consecutive months).
4. Monthly nonresidential water usage for a customer whose allocation is 21,000 gallons or more exceeds its allocation by 15 percent or more two or more times (which need not be consecutive months).
5. For residential customers and nonresidential customers whose allocation does not exceed 20,000 gallons, after the first disconnection water service shall be restored upon request for a fee of \$60, Monday through Friday prior to 4 pm. Restoration of service is not available on weekends or observed holidays.
6. For such customers, after the second disconnection, water service shall be restored within 24 hours of the request for a fee of \$500.
7. If water service is disconnected a third time for such customer, water service shall not be restored until the Corporation re-enters a level of water conservation less than Stage 2.
8. For master meter customers, the service restoration fees shall be the same as above times the number of dwelling units.
9. For nonresidential customers whose allocation is 21,000 gallons per month or more:
 - a. After the first disconnection water service shall be restored upon request, Monday through Friday prior to 4 p.m. for a fee in the amount of "X" in the following formula:
$$X = \$60 \times \text{Customer's Allocation in gallons} / 20,000 \text{ gallons}$$
 - b. After the second disconnection for said customers, water service shall be restored within 24 hours of the request for a fee of 10 times "X".
 - c. If water service is disconnected a third time for such customer, water service shall not be restored until the Corporation re-enters a level of water conservation less than Stage 2.
 - d. The General Manager is directed to institute written guidelines for disconnection of water service under this provision, which will satisfy minimum due process requirements, if any.

- I. It shall be a defense to imposition of a surcharge hereunder, or to termination of service, that water used over allocation resulted from loss of water through no fault of the customer (for example, a major water line break) for the following conditions:
 1. The customer shall have the burden to prove such defense by objective evidence (for example, a written certification of the circumstances by a plumber).
 2. A sworn statement may be required of the customer.
 3. This defense shall not apply if the customer failed to take reasonable steps for upkeep of the plumbing system, failed to reasonably inspect the system and discover the leak, failed to take immediate steps to correct the leak after discovered, or was in any other way negligent in causing or permitting the loss of water.

- J. When this section refers to allocation or water usage periods as "month," monthly," "billing period," and the like, such references shall mean the period in the Corporation's ordinary billing cycle which commences with the reading of a meter one month and commences with the next reading of that meter which is usually the next month.
 1. The goal for the length of such period is 30 days, but a variance of two days, more or less, will necessarily exist as to particular meters.
 2. If the meter reader system is prevented from timely reading a meter by any obstacle which is attributable to the customer, the original allocation shall apply to the longer period without modification.

Section XII: Variances

The Board of Directors, may, in writing, grant temporary variance for existing water uses otherwise prohibited under this Plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance and if one or more of the following conditions are met:

- a. Compliance with this Plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the Plan is in effect.
- b. Alternative methods can be implemented which will achieve the same level of reduction in water use.

Persons requesting an exemption from the provisions of this Plan shall file a petition for variance with the Nueces Water Supply Corporation within 5 days after the Plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by Board of Directors, or his/her designee, and shall include the following:

- a. Name and address of the petitioner(s).
- b. Purpose of water use.
- c. Specific provision(s) of the Plan from which the petitioner is requesting relief.
- d. Detailed statement as to how the specific provision of the Plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this Plan.

- e. Description of the relief requested.
- f. Period of time for which the variance is sought.
- g. Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this Plan and the compliance date.
- h. Other pertinent information.

Variations granted by the Nueces Water Supply Corporation shall be subject to the following conditions, unless waived or modified by the Board of Directors:

- a. Variations granted shall include a timetable for compliance.
- b. Variations granted shall expire when the Plan is no longer in effect, unless the petitioner has failed to meet specified requirements.

No variance shall be retroactive or otherwise justify any violation of this Plan occurring prior to the issuance of the variance.

Section XIII: Severability

It is hereby declared to be the intention of the Board of Directors of the Nueces Water Supply Corporation that the sections, paragraphs, sentences, clauses, and phrases of this Plan are severable and, if any phrase, clause, sentence, paragraph, or section of this Plan shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Plan, since the same would not have been enacted by the Board of Directors of the Nueces Water Supply Corporation without the incorporation into this Plan of any such unconstitutional phrase, clause, sentence, paragraph, or section.

ATTACHMENT 9

Water Finance Exchange

Memo

To: Nueces Water Supply Corporation Board of Directors
From: John Marez, Interim General Manager
Date: December 13, 2024
Topic: TWDB Funding Update

Background:

The Texas Water Development Board is in the process of reviewing the draft for planned pump station improvements for the South Texas Water Authority (STWA) system. The Texas Water Development Board requires verification of the project description as part of this review.

Analysis:

STWA proposes to use \$7,737,207 from the Drinking Water State Revolving Fund Program to improve five pump stations within its system. Key upgrades include:

1. Ricardo Water Supply Corporation Pump Station No. 1:
 - Sandblast and recoat elevated storage tank (EST).
 - Replace ground storage tanks (GSTs), pumps, generator, and warehouse.
 - Insulate bypass.
2. Ricardo Water Supply Corporation Pump Station No. 2:
 - Recoat EST and replace GSTs with a larger 100,000-gallon GST.
 - Replace pumps, generator, and chemical rooms.
 - Insulate bypass.
3. Ricardo Water Supply Corporation Pump Station No. 3:
 - Replace GSTs, pumps, generator, chemical rooms, and pump house.
 - Inspect hydro-tank and insulate bypass.
4. Nueces Water Supply Corporation Central Pump Station:
 - Replace a 0.63-million-gallon GST, pumps, generator, and chemical rooms.
 - Inspect hydro-tank and insulate bypass.
5. Nueces Water Supply Corporation Bishop East Pump Station:
 - Install catwalk and stairs on GST.
 - Replace pumps, generator, and chemical rooms.
 - Inspect hydro-tank and insulate bypass.

Additional improvements include electrical system upgrades, SCADA enhancements, perimeter fencing repair, and miscellaneous piping repairs, all within existing pump station areas.

Staff Recommendation:

This memo is for informational purposes only.

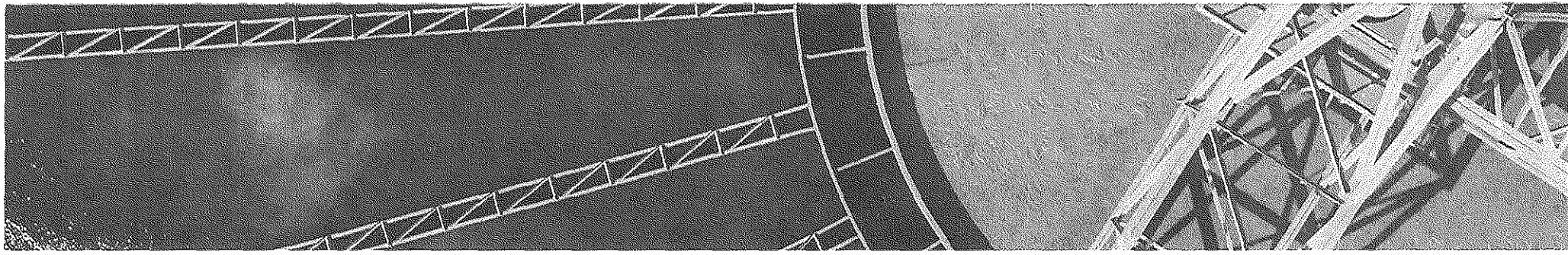
Board Action:

No board action is required at this time.

Summary:

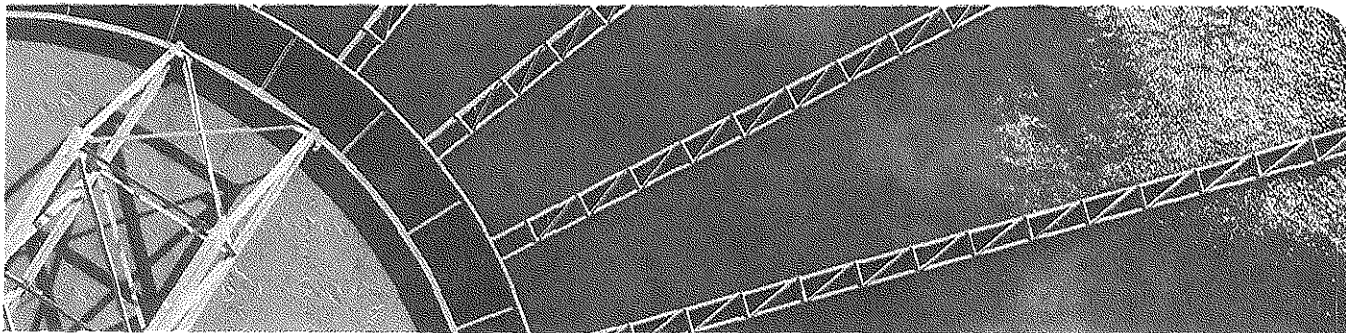
STWA is finalizing its internal review for pump station improvements.

A special board meeting will be conveyed on January 7, 2025 for STWA, NWSC, RWSC to vote and approve the final agreement and receiving of grant funds from TWDB.



Nueces WSC

Presentation to the Board of Directors *Update and Status of Water Funding*

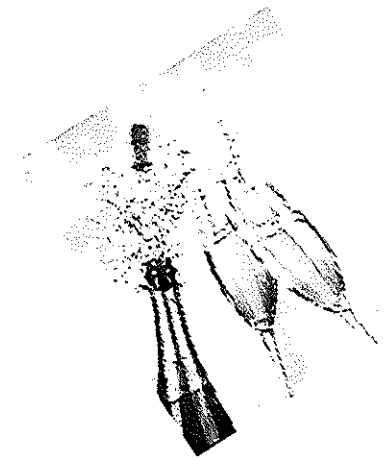


WFX
WATER FINANCE EXCHANGE
NO COMMUNITY LEFT BEHIND

Funding Update

- The TWDB has provided the following Loan to Forgiveness amounts for the March 2023 project:

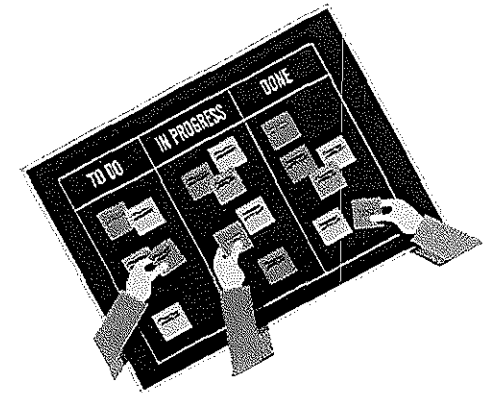
Allocation of Funds		
Component	Proceeds	WSC
Loan	875,000	Nueces
Loan Forgiveness	1,989,567	Nueces
Sub-Total	\$ 2,864,567	Nueces



- The funds were committed by the TWDB on October 17th

Working Towards Closing

- The TWDB has offered a closing date - **February 13, 2025**
- Several tasks are to be completed by then:
 - Bond Ordinance by all groups (January 7, 2025)
 - Closing memos
 - Paying agent
 - Principal forgiveness agreement
 - Other items



Working Towards Closing

- The Nueces WSC and STWA will have to approve the issuance of bonds
- The term of those bonds can be adjusted to 20 or 30 years - now is the time

20 Year Interest Rates ¹

Equivalency DWSRF Estimated Rates

<i>Rating</i>	<i>Market¹</i>	<i>TWDB^{2,3}</i>
AAA	3.25%	2.11%
AA	3.38%	2.20%
A	3.59%	2.33%
BAA	3.95%	2.57%

30 Year Interest Rates ¹

Equivalency DWSRF Estimated Rates

<i>Rating</i>	<i>Market¹</i>	<i>TWDB^{2,3}</i>
AAA	3.95%	2.57%
AA	4.08%	2.65%
A	4.22%	2.74%
BAA	4.49%	2.92%



Working Towards Closing

- The Bond Counsel and Municipal Advisor are taking charge of those final items
- WFX is helping to offer ideas and guidance - go between with staff, consultants and TWDB

What's Next?

- Find other low-cost opportunities



- Creating a coastal bend water collaborative





QUESTIONS?

ATTACHMENT 10

Non-Standard Water System Extension Agreement – Tesla

RESOLUTION 24- 04

RESOLUTION AUTHORIZING BOARD PRESIDENT AND GENERAL MANAGER
TO TAKE ANY AND ALL ACTIONS NECESSARY OR CONVENIENT
TO FINALIZE AND EXECUTE A
NON-STANDARD WATER SYSTEM EXTENSION AGREEMENT WITH
TESLA, INC.

STATE OF TEXAS §
 §
COUNTY OF NUECES §

WHEREAS, the Board of Directors of Nueces Water Supply Corporation (the “Corporation”) wishes to authorize its President and General Manager to take any and all actions necessary or convenient to finalize and execute a Non-Standard Water System Extension Agreement with Tesla, Inc.

NOW, THEREFORE, BE IT RESOLVED that the Corporation hereby authorizes the President of the Corporation and General Manager of the Corporation at act on behalf and as the act of the Corporation to take any and all actions necessary or convenient to finalize and execute a Non-Standard Water System Extension Agreement with Tesla, Inc.

Duly adopted this the 18th day of December, 2024.

President

ATTEST:

Secretary

[SEAL]

ATTACHMENT 11

Temporary Limited Non-Standard Water Service Agreement – Tesla

RESOLUTION 24- 05

RESOLUTION AUTHORIZING BOARD PRESIDENT AND GENERAL MANAGER
TO TAKE ANY AND ALL ACTIONS NECESSARY OR CONVENIENT
TO FINALIZE AND EXECUTE A
TEMPORARY LIMITED WATER SERVICES AGREEMENT WITH
TESLA, INC.

STATE OF TEXAS §
 §
COUNTY OF NUECES §

WHEREAS, the Board of Directors of Nueces Water Supply Corporation (the "Corporation") wishes to authorize its President and General Manager to take any and all actions necessary or convenient to finalize and execute a Temporary Limited Water Services Agreement with Tesla, Inc.

NOW, THEREFORE, BE IT RESOLVED that the Corporation hereby authorizes the President of the Corporation and General Manager of the Corporation at act on behalf and as the act of the Corporation to take any and all actions necessary or convenient to finalize and execute a Temporary Limited Water Services Agreement with Tesla, Inc.

Duly adopted this the 18th day of December, 2024.

President

ATTEST:

Secretary

[SEAL]

ATTACHMENT 12

Non-Standard Service Agreement – Vaquero Ventures

Memo

To: Nueces Water Supply Corporation, Board of Directors
From: John Marez, General Manager Interim
Date: December 13, 2024
Topic: Non-Standard Service Agreement (Including Water System Extension) with Vaquero Driscoll Partners, LP, Easements

Background:

Vaquero Driscoll Partners LP has approached Nueces Water Supply Corporation (NWSC) to establish water service for their development, which requires a Non-Standard Service Agreement (NSSA). This agreement will include provisions for a water system extension and related easement arrangements. Legal counsel has provided guidance on key issues that need to be addressed in the NSSA and associated documents.

Analysis:

Legal counsel has drafted the required documents, including a new 10-foot waterline easement and a redline version of the Partial Release of Right of Way Easement. These drafts ensure that NWSC maintains the necessary rights while accommodating the developer's needs. These adjustments will also be incorporated into the Non-Standard Service Agreement to clarify responsibilities and avoid future conflicts. NWSC will accept a 10-foot easement for the proposed waterline and agrees to a partial release of the prior easement with minor modifications.

If Vaquero Driscoll Partners LP opts for a formal escrow arrangement, NWSC is willing to this preference. Legal counsel has been requested to draft an escrow agreement and propose an escrow agent if required (attached). NWSC prefers to manage payments by maintaining them in a separate ledger account, waiving the procedures of an escrow agent and escrow agreement.

Our finance department is finalizing the details of these calculations. These fees will guarantee that NWSC recovers costs incurred in developing this non-standard service.

Staff Recommendation:

The following recommendations are needed to finalize this agreement:

- Approve the draft easement documents prepared by legal counsel, subject to any additional feedback.
- Authorize staff to finalize the Non-Standard Service Investigation Fee calculations and present them to the developer.
- Allow flexibility for payment arrangements, including the option of a formal escrow agreement if requested by the developer.

Memo

12/13/24

Page 2 of 2

Board Action:

- Review and approve the draft documents for the easement and the Non-Standard Service Agreement.
- Authorize staff to proceed with negotiations and finalize the agreement with Vaquero Driscoll Partners LP based on our legal counsel's recommendations.

Summary:

The Non-Standard Service Agreement with Vaquero Driscoll Partners LP, including the water system extension and easement accommodations, ensures that NWSC can meet the developer's needs while protecting its operational and financial interests.

Board approval and direction on these recommendations will allow staff to move forward and complete this agreement.

RESOLUTION 24- 06

RESOLUTION AUTHORIZING BOARD PRESIDENT AND GENERAL MANAGER
TO TAKE ANY AND ALL ACTIONS NECESSARY OR CONVENIENT
TO FINALIZE AND EXECUTE A NON-STANDARD WATER SERVICES AGREEMENT
(INCLUDING WATER SYSTEM EXTENSION) WITH
VAQUERO DRISCOLL PARTNERS, LP AND TO
NEGOTIATE AND EXECUTE AN ESCROW AGREEMENT, EASEMENTS AND RELEASES
OF EASEMENTS IN CONNECTION WITH SAME

STATE OF TEXAS §
 §
COUNTY OF NUECES §

WHEREAS, the Board of Directors of Nueces Water Supply Corporation (the “Corporation”) wishes to authorize its President and General Manager to take any and all actions necessary or convenient to finalize and execute a Non-Standard Water Services Agreement (including Water System Extension) with Vaquero Driscoll, LP and to negotiate and execute an Escrow Agreement, easements and releases of easements in connection with same.

NOW, THEREFORE, BE IT RESOLVED that the Corporation hereby authorizes the President of the Corporation and General Manager of the Corporation at act on behalf and as the act of the Corporation to take any and all actions necessary or convenient to finalize and execute a Non-Standard Water Services Agreement (including Water System Extension) with Vaquero Driscoll, LP and to negotiate and execute an Escrow Agreement, easements and releases of easements in connection with same.

Duly adopted this the 18th day of December, 2024.

President

ATTEST:

Secretary

[SEAL]

Form 207

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709



**Certificate of Formation
Limited Partnership**

Filed in the Office of the
Secretary of State of Texas
Filing #: 804169509 07/28/2021
Document #: 1068553990002
Image Generated Electronically
for Web Filing

Filing Fee: \$750

Article 1 - Entity Name and Type

The filing entity being formed is a limited partnership. The name of the entity is:

Vaquero Driscoll Partners, LP

The name must contain the words "Limited Partnership," or "Limited," or the abbreviation "L.P.," "LP," or "Ltd." The name must not be the same as, deceptively similar to or similar to that of an existing corporate, limited liability company, or limited partnership name on file with the secretary of state. A preliminary check for "name availability" is recommended.

Article 2 - Principal Office

The address of the principal office in the United States where records of the partnership are to be kept or made available is set forth below:

2900 Wingate Street, Suite 200, Fort Worth, TX, USA 76107

Article 3 - Registered Agent and Registered Office

A. The initial registered agent is an organization (cannot be limited partnership named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:

William A Landreth

C. The business address of the registered agent and the registered office address is:

Street Address:

**2900 Wingate Street
Suite 200 Fort Worth TX 76107**

Consent of Registered Agent

A. A copy of the consent of registered agent is attached.

OR

B. The consent of the registered agent is maintained by the entity.

Article 4 - General Partner Information

The name and address of each general partner are as follows:

General Partner 1: (Business Name) **Vaquero Ventures Management, LLC**

Address: **2900 Wingate Street Suite 200 Fort Worth TX, USA 76107**

Supplemental Provisions / Information

[The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing

A. This document becomes effective when the document is filed by the secretary of state.

OR

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Signature of General Partner 1: **William A. Landreth, III, Manager of Vaquero Ventures Management, LLC**

FILING OFFICE COPY

**NUECES WATER SUPPLY CORPORATION
NON-STANDARD SERVICE AGREEMENT
(Including Water System Extension)**

THIS AGREEMENT is made and entered into by and between Vaquero Driscoll Partners, LP, a Texas limited partnership, hereinafter referred to as "Developer," and Nueces Water Supply Corporation, hereinafter referred to as "WSC."

WHEREAS, Developer is engaged in developing that certain property described in the attached Exhibit "A," hereinafter referred to as "the Property," and

WHEREAS, WSC owns and operates a water system which supplies potable water for human consumption and other domestic uses to customers within its service area; and

WHEREAS, the Property is located in the WSC's service area; and

WHEREAS, Developer has requested WSC to provide water service to the Property through a 6-inch line extension of WSC's water system, such extension being hereinafter referred to as "the Water System Extension"; and

WHEREAS, WSC has agreed to complete the Water System Extension, in accordance with the terms of this agreement;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, Developer and WSC agree as follows:

1. **Engineering and Design of the Water System Extension.**

- (a) The Water System Extension shall be engineered and in accordance with the applicable specifications of the Developer, WSC, all governmental agencies having jurisdiction over the construction of the Water System Extension and by WSC's consulting engineer (the "Engineer"). The parties agree that the Engineer shall be International Consulting Engineers (ICE). The Engineer shall complete the plans and specifications to the reasonable satisfaction of Developer, WSC, and all governmental agencies having jurisdiction over the Water System Extension pursuant a design/build contract between the Engineer and WSC (the "ICE Design/Build Contract") which has been reviewed by Developer and WSC and which is hereby incorporated herein for all purposes. After completion of the plans and specifications by the Engineer, both parties shall approve such plans in writing, the approved plans and specifications are hereinafter referred to as

the "Plans". The Plans shall become part of this Agreement by reference and shall more particularly define "the Water System Extension."

- (b) The Water System Extension must be sized to provide continuous and adequate water service to the Property based on plans for the development of the Property attached hereto as Exhibit "B" (the "Developer's Plans").
NOTE: THIS EXHIBIT NEEDS TO BE ATTACHED.
- (c) WSC may require the Water System Extension to be oversized in anticipation of the needs of other customers of the WSC, provided, any additional costs attributable to the oversizing shall be the sole responsibility of WSC.
- (d) Due to the variable market for needed materials and supplies, quotations for the cost of construction of utility plant and/or upgrades that will be necessary to construct and install the Water System Extension shall be good only for the date of presentation by the Engineer and/or contractor. A quotation for the total cost of construction and installation of the Water System Extension as of the date of this Agreement is attached hereto as Exhibit "C" (the "Total Cost Quotation"). Following the date hereof, materials and supplies for construction may require an adjustment to reflect current market prices, provided that any such adjustment shall be subject to the terms of Section 6.(a)(iii) below.

2. **Required Easements or Rights-of-Way.**

- (a) WSC shall be responsible for dedicating or acquiring any easements across privately owned land which are necessary for the construction of the Water System Extension and for obtaining any governmental approvals (including without limitation any required by the Texas Department of Transportation ("TXDOT")) necessary to construct the Water System Extension in public rights-of-way.
- (b) Developer shall grant to WSC a non-exclusive easement (the "Property Easement") related to the Water System Extension on and through the portion of the Property which contains permanent infrastructure related to the Water System Extension. The Property Easement shall be not less than ten feet (10') in width and WSC and Developer shall determine the location and course of the Property Easement pursuant to mutual agreement.
- (c) Developer hereby grants to WSC a temporary construction easement upon those certain portions of the Property as may be reasonably required for the construction of the Water System Extension. Following WSC's completion of the Water System Extension, WSC shall restore the Property to substantially the same condition that existed prior to WSC's construction activities upon the Property. Such temporary easement will automatically

terminate and expire without further documentation being required upon the completion of the Water System Extension.

3. **Construction of the Water System Extension.**

- (a) No construction will commence until the Plans have been submitted to and approved by the Texas Commission on Environmental Quality and any other required regulatory agency, as may be required by law. WSC shall have no liability of any kind to Developer occasioned by delays or difficulties in obtaining any required governmental approvals, permits, licenses or certificates.
- (b) The Water System Extension shall be constructed in accordance with the Plans and pursuant to the ICE Design/Build Contract. WSC and Developer shall have the right to inspect all phases of the construction of the Water System Extension.
- (c) Following timely delivery of Escrow Funds to the Escrow Agent and Developer Fees to WSC, and the receipt of any approvals from the Texas Commission on Environmental Quality (the "TCEQ") and other required governmental agencies and the execution of the contract for construction, WSC shall promptly cause construction to commence and make all commercially reasonable efforts to complete construction in a good and workmanlike manner at the earliest possible time.

4. **Dedication of Water System Extension to WSC.**

Upon proper completion of construction of the Water System Extension and final inspection thereof by WSC, the Water System Extension shall be dedicated to the WSC by an appropriate legal instrument approved by Developer's and WSC's attorney. The Water System Extension shall thereafter be owned and maintained by WSC.

5. **Insurance.**

(a) Prior to commencing construction of the Water System Extension, WSC shall obtain or require its contractors to obtain and thereafter maintain, so long as such construction activity is occurring on the Property and this Agreement is in effect, at least the minimum insurance coverages set forth as follows: Commercial General Liability with limits not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 any one person or organization for personal and advertising injury, \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate covering (a) property/operations liability, (b) independent contractors liability, and (c) broad form contractual liability; (d) Umbrella/Excess Liability Insurance providing excess liability coverage with respect to Commercial General Liability, business automobile liability and Employers Liability policies described above, with limits not less than \$2,000,000; (e) Commercial Property Insurance on all Contractor-supplied property for Contractor's operations including but not limited to equipment (stationary or mobile),

tools (including employee tools), supplies, materials or any property owned, leased or the legal responsibility of the general contractor or its subcontractors.

(b) All such insurance shall include the following provisions:

1. Provide that the policy may not be canceled without at least thirty (30) days prior written notice by the insurer to each insured and any additional insureds;

2. Name the other of WSC and the Developer as an additional insured on all policies. The policies held by any general contractor or subcontractor shall be primary and non-contributory to any other insurance available to WSC or the Developer, as applicable;

3. Provide for the severability of interests; and

4. provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other additional insureds or the insured, respectively.

(c) All insurance required by this Section 5 shall be procured from companies licensed in Texas and shall be rated by Best's Insurance Reports not less than A-. The insurance may be carried under (i) an individual policy covering this location, (ii) a blanket policy or policies which include(s) other liabilities, properties and locations of a party hereto, (iii) a plan of self-insurance, or (iv) a combination of any of the foregoing insurance programs. Each party agrees to furnish the other, upon request, a certificate(s) of insurance evidencing that the insurance require to be carried hereunder is in full force and effect.

(d) Neither WSC or Developer (as applicable, the "Released Party") shall be liable by way of subrogation or otherwise to the other party (as applicable, the "Insured Party") or to any insurance company insuring the Insured Party for any loss or damage to any of the property of the Insured Party covered by insurance even though such loss or damage might have been occasioned by the negligence of the Released Party or any of its respective affiliates. This release shall be in effect only so long as the applicable insurance policies shall contain a clause or endorsement to the effect that the waiver shall not affect the right of the Insured Party to recover under such policies. Each of WSC and Developer shall use is reasonable efforts, including payment of any additional premium, to have its insurance policies contain the standard waiver of subrogation clause. In the event either party's insurance carrier declines to include in such carrier's policies a standard waiver of subrogation clause, such Party shall promptly notify the other party.

6. **Cost of the Water System Extension.**

(a) The mutually approved estimate of the cost to complete the Water System Extension, as shown on the Total Cost Quotation, is **\$231,308.42** ("System Extension Cost"). Which shall be paid by the parties as follows:

- (i) Developer shall be responsible for fifty-three percent (53%) of the System Extension Cost ("Developer's Portion"), initially estimated to be **\$122,593.46**.
- (ii) WSC shall be responsible for forty-seven percent (47%) of the System Extension Cost ("WSC's Portion"), initially estimated to be **\$108,714.96**.
- (iv) Except as otherwise provided in this Agreement, the Parties hereby further acknowledge and agree that (A) Developer will pay Developer's Portion of any construction cost overruns in excess of the initial System Extension Costs calculated in this Section 6(a) and (B) WSC will pay WSC's Portion of any construction cost overruns in excess of the initial System Extension Costs calculated in this Section 6(a).
- (v) Except as otherwise provided in this Agreement, any change orders modifying the scope of work or the System Extension Costs to the Water System Extension shall first be approved by WSC and Developer in writing prior to commencing any labor or ordering any materials in connection with any such change order, with such approval not to be unreasonably conditioned, delayed, or withheld.
- (b) The payments set forth in Subsections (i) and (ii) below shall be paid directly to WSC and shall not be subject to escrow but shall be the unrestricted funds of WSC.
- (i) A Non-Standard Service Investigation Fee in an amount of \$ _____ shall be paid by Developer to the WSC upon execution of this Agreement. NOTE: WE NEED TO INSERT THIS FEE AND ANY OTHER APPLICABLE FEES.
- (ii) The "Capital Contribution" and "Membership Fee", in the total amount of \$ _____ shall be paid by the Developer to the WSC upon execution of this Agreement. NOTE: THIS AMOUNT NEEDS TO BE INSERTED.
- (c) All funds required for the Water System Extension construction shall be escrowed with Title Partners, LLC ("Escrow Agent") pursuant to a separate escrow agreement to be mutually agreed to by and between Developer, WSC, and Escrow Agent (the "Escrow Agreement"). The account shall be in the name of and under the sole control of the Escrow Agent. Interest accrued thereon shall be retained in the account for the benefit of the Developer. All escrow and other charges associated with the creation and maintenance of this account shall be borne by Developer. Developer shall be required to maintain the level of funds in said escrow account at no less

than one hundred percent (100%) of the Developer's Portion (the "Escrowed Funds"). All funds remaining in the escrow account following the proper completion and dedication of the Water System Extension to WSC shall be refunded to Developer upon written request from Developer to WSC and Escrow Agent. Developer-paid investigation fees, impact or capital recovery fees or capacity reservation charges shall be paid directly to WSC at execution of this Agreement and shall not be subject to escrow but shall be the unrestricted funds of WSC ("Developer Fees"). Upon timely delivery of Escrowed Funds to the Escrow Agent and the Developer Fees to WSC and provided the necessary TCEQ approvals and other governmental approvals have been received, and the contract for construction has been executed, WSC shall authorize construction to commence and make all reasonable efforts to complete construction at the earliest possible time. WSC shall have the right to submit requests for release of escrowed funds for actual costs incurred in performing the construction of the Water System Extension, including but not limited to any costs associated with obtaining new approvals and permits, if necessary, in accordance with the Escrow Agreement.

- (d) Nothing herein shall be construed as obligating the Developer to maintain the Water System Extension.
- (e) If WSC has required the Water System Extension to be oversized in anticipation of the needs of the other customers of WSC, WSC shall pay and be solely responsible for any additional costs of construction attributable to the oversizing, including without limitation any additional engineering and design and/or permits costs.
- (f) If the Developer requests WSC to install meters at service locations during the construction of the distribution system infrastructure, Developer shall pay the normal monthly service rates for each meter beginning with the date of installation. Unless the service meter is for the Developer's own permanent use and not for property to be resold to the public in the ordinary course of business, Developer shall pay a customer service deposit of \$100.00 per 5/8-inch meter. The deposit shall be increased by the meter equivalency factors in WSC's approved tariff for larger meters. These customer service deposits shall be payable in lieu of the WSC's customary membership fee and shall be managed and refundable in the same fashion as a membership fee under WSC's by-laws and tariff. Failure to timely pay the service charges and/or deposits for any individual meter shall be grounds for discontinuance and/or refusal of service for all other meters held by Developer.

7. **Service from the Water System Extension.**

- (a) After proper completion and dedication of the Water System Extension to WSC, WSC shall provide continuous and adequate water service to the Property under the requirements of WSC's state-issued certificate of convenience and necessity, the regulations of the Texas Commission on Environmental Quality and all duly adopted rules and regulations of WSC and payment of the following:
 - (1) All standard rates, fees and charges as reflected in WSC's approved tariff.
- (b) It is understood and agreed that the obligation of WSC to provide water service in the manner contemplated by this Agreement is subject to the issuance by the Texas Commission on Environmental Quality and all other governmental agencies having jurisdiction of all permits, certificates or approvals required to lawfully provide such service.
- (c) Unless the prior approval of WSC is obtained, the Developer shall not:
 - (1) construct or install additional waterlines or facilities to service areas outside the Property;
 - (2) add any additional lands to the Property for which water service is to be provided pursuant to this agreement; or
 - (3) connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity.
- (d) Notwithstanding any provision in this Agreement to the contrary, the WSC is not obligated to and will not be providing water to the Property for fire flow protection. Developer acknowledges and agrees that fire flow protection is not required by this Agreement.

8. **Effect of Force Majeure.**

In the event either party is rendered unable by force majeure to carry out any of its obligations under this Agreement, in whole or in part, then the obligations of that party, to the extent affected by the force majeure, shall be suspended during the continuance of the inability, provided however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party.

The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial

disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage or accidents to equipment, pipelines or canals, partial or complete failure of water supply, and any other inabilities of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement or strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty.

9. **Notices.**

Any notice to be given hereunder by either party to the other party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed. Any notice mailed to the WSC shall be addressed:

Nueces Water Supply Corporation
Attn: General Manager
2302 E. Sage Rd,
Kingsville, Texas 78363

with copy to:

Bill Flickinger
Willatt & Flickinger, PLLC
12912 Hill Country Blvd., Suite F-232
Austin, Texas 78738

Any notice mailed to Developer shall be addressed:
Vaquero Driscoll Partners, LP
2627 Tillar Street, St. 111
Fort Worth, Texas 76107
Attn: Emily Crockett

Either party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

10. **Severability.**

The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.

11. **Entire Agreement.**

This Agreement, including any exhibits attached hereto and made a part hereof, constitutes the entire agreement between the parties relative to the subject matter of this Agreement. All prior agreements, covenants, representations or warranties, whether oral or in writing, between the parties are merged herein.

12. **Amendment.**

No amendment of this Agreement shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the authorized representatives of the WSC and the Developer, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

13. **Governing Law.**

This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable within the state-certificated service area of WSC.

14. **Venue.**

Venue for any suit arising hereunder shall be in Nueces County, Texas.

15. **Successors and Assigns.**

This Agreement shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.

16. **Assignability.**

The rights and obligations of the Developer hereunder may not be assigned without the prior written consent of the WSC, provided such consent shall not be unreasonably withheld, conditioned, or delayed.

17. **Effective Date.**

This Agreement shall be effective from and after the date of due execution by all parties.

18. **Conflict.**

In the event there is determined to be a conflict between the terms of this Agreement and the provisions in the WSC's tariff governing the same matter, the tariff shall prevail.

19. **Attorneys' Fees.**

The prevailing party in any litigation concerning this Agreement shall be entitled to recover from the other party all court costs and reasonable attorneys' fees incurred by such prevailing party in connection with such litigation.

20. **Counterparts.**

This Agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all of which counterparts, taken together, shall constitute one and the same agreement.

21. **Binding Effect.**

The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative in multiple copies, each of equal dignity, on the date or dates indicated below.

NUECES WATER SUPPLY CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

“DEVELOPER”

VAQUERO DRISCOLL PARTNERS, LP,
a Texas limited partnership

By: VAQUERO VENTURES MANAGEMENT, LLC, General Partner

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A The Property

Tract 1:

BEING A TRACT OF LAND SITUATED IN THE J.A. CABASOS SURVEY, ABSTRACT NO. 63, IN NUECES COUNTY, TEXAS, BEING A PORTION OF THAT SAME TRACT OF LAND CONVEYED TO STEVEN B. DENTON BY DEED RECORDED IN VOLUME 1871, PAGE 443 OF THE DEED RECORDS OF NUECES COUNTY, TEXAS (D.R.N.C.T.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD FOUND WITH A ORANGE CAP STAMPED "JPH LAND SURVEYING" FOR CORNER, SAID POINT BEING THE NORTHWEST CORNER OF A TRACT OF LAND CONVEYED TO VAQUERO DRISCOLL PARTNERS, LP BY DEED RECORDED IN DOCUMENT NO. 2021061077 OF THE OFFICIAL PUBLIC RECORDS OF NUECES COUNTY, TEXAS (O.P.R.N.C.T.), SAID POINT ALSO LYING ON THE EAST LINE OF SAID DENTON TRACT, AND ON THE SOUTH RIGHT-OF-WAY LINE OF F.M. HIGHWAY 665 (VARIABLE WIDTH RIGHT-OF-WAY);

THENCE SOUTH 17 DEGREES 03 MINUTES 25 SECONDS WEST, DEPARTING THE SOUTH RIGHT-OF-WAY LINE OF SAID F.M. HIGHWAY 665, WITH THE EAST LINE OF SAID DENTON TRACT AND WITH THE WEST LINE OF SAID VAQUERO TRACT, PASSING A 1/2 INCH IRON ROD FOUND WITH A ORANGE CAP STAMPED "JPH LAND SURVEYING" FOR REFERENCE AT A DISTANCE OF 539.32 FEET AND CONTINUING FOR A TOTAL DISTANCE OF 936.03 FEET TO A 5/8 INCH IRON ROD FOUND FOR CORNER, SAID POINT BEING THE SOUTHWEST CORNER OF SAID VAQUERO TRACT, SAME BEING THE SOUTHEAST CORNER OF SAID DENTON TRACT AND LYING ON THE NORTH LINE OF THE REMAINDER OF A TRACT CONVEYED TO MELVYN LYLEN MCNAIR BY DEED RECORDED IN VOLUME 1891, PAGE 688, D.R.N.C.T.;

THENCE NORTH 72 DEGREES 52 MINUTES 38 SECONDS WEST, WITH THE NORTH LINE OF SAID MCNAIR TRACT AND WITH THE SOUTH LINE OF SAID DENTON TRACT, A DISTANCE OF 229.65 FEET TO A 4 INCH BRASS DISK STAMPED "TXDOT" FOUND FOR CORNER, SAID POINT BEING THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO THE STATE OF TEXAS FOR RIGHT-OF-WAY RECORDED IN DOCUMENT NO. 2015013728, O.P.R.N.C.T., SAME BEING THE NORTHEAST CORNER OF A TRACT OF LAND CONVEYED TO THE STATE OF TEXAS FOR RIGHT-OF-WAY RECORDED IN DOCUMENT NO. 2015004150, O.P.R.N.C.T., SAID POINT LYING ON THE EAST RIGHT-OF-WAY LINE OF STATE HIGHWAY NO. 77;

THENCE NORTH 17 DEGREES 01 MINUTES 25 SECONDS EAST, OVER, ACROSS, AND UPON SAID DENTON TRACT, WITH THE EAST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY NO. 77 AND WITH THE EAST LINE OF SAID STATE OF TEXAS TRACT RECORDED IN DOCUMENT NO. 2015013728, A DISTANCE OF 835.51 FEET TO A 4 INCH BRASS DISK STAMPED "TXDOT" FOUND FOR CORNER AT THE SOUTH END OF A CORNER CLIP AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY NO. 77 WITH THE SOUTH RIGHT-OF-WAY LINE OF SAID F.M. HIGHWAY 665;

THENCE NORTH 62 DEGREES 00 MINUTES 19 SECONDS EAST, CONTINUING THROUGH SAID DENTON TRACT, WITH THE SOUTHEAST LINE OF SAID CORNER CLIP AND SAID STATE OF TEXAS TRACT RECORDED IN DOCUMENT NO. 2015013728, A DISTANCE OF 141.47 FEET TO A 4 INCH BRASS DISK STAMPED "TXDOT" FOUND FOR CORNER AT THE EAST END OF SAID CORNER CLIP, SAID POINT BEING THE NORTHEAST CORNER OF SAID STATE OF TEXAS RIGHT-OF-WAY TRACT AND LYING ON THE SOUTH RIGHT-OF-WAY LINE OF SAID F.M. HIGHWAY 665;

THENCE SOUTH 73 DEGREES 00 MINUTES 04 SECONDS EAST, CONTINUING THROUGH SAID DENTON TRACT, WITH THE SOUTH RIGHT-OF-WAY LINE OF SAID F.M. HIGHWAY 665, A DISTANCE OF 130.19 FEET TO THE POINT OF BEGINNING AND CONTAINING 210,154 SQUARE FEET OR 4.824 ACRES OF LAND, MORE OR LESS.

Tract 2:

FIELD NOTES TO THAT CERTAIN TRACT SITUATED IN THE CITY OF DRISCOLL EXTRATERRITORIAL JURISDICTION, NUECES COUNTY, TEXAS, SAID TRACT BEING A PORTION OF THE TRACT DESCRIBED IN THE DEED TO DONALD E. MCNAIR AND MARY ANNA MCNAIR, RECORDED IN VOLUME 1870, PAGE 1004, DEED RECORDS, NUECES COUNTY, TEXAS (D.R.N.C.T.), LYING IN THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 110 OF THE GEO. H. PAUL SUBDIVISION OF THE DRISCOLL RANCH, AN ADDITION COVERING THE CITY OF DRISCOLL, THE CITY OF DRISCOLL EXTRATERRITORIAL JURISDICTION, AND SURROUNDING LANDS, IN NUECES COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 1, PAGE 21, PLAT RECORDS, NUECES COUNTY, TEXAS; THE SUBJECT TRACT, SURVEYED BY JPH LAND SURVEYING, INC., IS MORE PARTICULARLY DESCRIBED AS FOLLOWS (BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM OF 1983, SOUTH ZONE.):

BEGINNING AT A 5/8 INCH REBAR FOUND AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY OF F.M. 665 (A 100 FOOT WIDE RIGHT OF WAY) AS DESCRIBED IN THE DEED TO THE STATE OF TEXAS, RECORDED UNDER VOLUME 471, PAGE 134, D.R.N.C.T. AND THE EAST LINE OF THE 12.00-ACRE TRACT DESCRIBED IN THE DEED TO DONALD E. MCNAIR AND MARY ANNA MCNAIR, RECORDED IN VOLUME 1870, PAGE 1004, D.R.N.C.T., FROM WHICH A 5/8 INCH REBAR FOUND AT THE NORTHEAST CORNER OF THE TRACT DESCRIBED IN THE DEED TO AURELIO M. MORIN, ET UXOR, BEARS SOUTH 73°00'04" EAST, A DISTANCE OF 343.00 FEET;

THENCE SOUTH 17°03'25" WEST, WITH THE EAST LINE OF THE SAID MCNAIR TRACT, PASSING AT A DISTANCE OF 539.32 FEET TO A SET 1/2 INCH CAPPED REBAR STAMPED "JPH LAND SURVEYING", AND CONTINUING ON SAID COURSE, IN ALL, A TOTAL DISTANCE OF 935.58 FEET TO A 1/2 INCH CAPPED REBAR STAMPED "JPH LAND SURVEYING" SET AT THE SOUTHEAST CORNER OF THE MCNAIR TRACT;

THENCE NORTH 73°03'00" WEST, WITH THE SOUTH LINE OF THE MCNAIR TRACT, A DISTANCE OF 530.89 FEET TO AN 8-INCH FENCE POST FOUND AT THE SOUTHWEST CORNER OF THE MCNAIR TRACT;

THENCE NORTH 17°03'25" EAST, WITH THE WEST LINE OF THE MCNAIR TRACT, PASSING AT A DISTANCE OF 396.71 FEET TO A SET 1/2 INCH CAPPED REBAR STAMPED "JPH LAND SURVEYING", AND CONTINUING ON SAID COURSE, IN ALL, A TOTAL DISTANCE OF 936.03 FEET TO A 1/2 INCH CAPPED REBAR STAMPED "JPH LAND SURVEYING" SET AT THE INTERSECTION OF THE SAID SOUTH RIGHT OF WAY OF F.M. 665 AND THE WEST LINE OF THE MCNAIR TRACT, FROM WHICH A FOUND TEXAS DEPARTMENTS OF TRANSPORTATION TYPE II MONUMENT BEARS NORTH 73°00'04" WEST, A DISTANCE OF 130.19 FEET;

THENCE SOUTH 73°00'04" EAST, WITH THE SOUTH RIGHT OF WAY LINE OF F.M. 665 AND THROUGH THE INTERIOR OF THE MCNAIR TRACT, A DISTANCE OF 530.89 FEET RETURNING TO THE POINT OF BEGINNING AND ENCLOSING 11,405 ACRES (1,496,808 SQUARE FEET).

EXHIBIT B
Developer's Plans

[to be inserted]

EXHIBIT C
The Total Cost Quotation

PROJECT: VAQUERO VENTURES DRISCOLL PROJECT
PREPARED BY: INTERNATIONAL CONSULTING ENGINEERS

South Texas Water Authority (STWA) Waterline Installation For Vaquero Ventures Driscoll Project					
COST ESTIMATE SUMMARY					
Line Item Number	Description	Unit	Qty	Unit Costs	Line Item Cost
A1	Mobilization / Bonds / Insurance	LS	1	\$ 23,487.58	\$ 23,487.58
A2	SWPP	LS	1	\$ 1,800.00	\$ 1,800.00
A3	6" PVC C900 DR 18 Waterline	LF	3263	\$ 39.86	\$ 130,063.18
A4	6" SS Tapping Sleeve	EA	1	\$ 4,345.00	\$ 4,345.00
A5	6" MI Gate Valve	EA	2	\$ 1,780.00	\$ 3,560.00
A6	6"x45 DI Bend	EA	10	\$ 638.00	\$ 6,380.00
A7	Seeding	LS	1	\$ 2,350.00	\$ 2,350.00
A8	Asphalt Repair	LS	1	\$ 3,574.00	\$ 3,574.00
A9	Traffic Control	LS	1	\$ 7,500.00	\$ 7,500.00
A10	Construction Staking	LS	1	\$ 3,216.00	\$ 3,216.00
A11	Equipment	LS	1	\$ 6,702.00	\$ 6,702.00
A12	Construction Manager	LS	1	\$ 8,160.00	\$ 8,160.00
CONSTRUCTION TOTAL:					\$ 201,137.76
ENGINEERING, DESIGN, and PROJECT ADMINISTRATION SERVICES					
Planning:					\$ 2,011.38
Engineering and Design:					\$ 16,091.02
Topographic Survey:					\$ 5,028.44
Project Management:					\$ 7,039.82
TOTAL ENGINEERING, DESIGN AND PROJECT MANAGEMENT:					\$ 30,170.66
TOTAL PROJECT COST:					\$ 231,308.42
PROJECT COST DISTRIBUTION					
Nueces Water Supply Corporation Participation 47%:					\$ 108,714.96
Vaquero Ventures Participation 53%:					\$ 122,593.46

ATTACHMENT 13

Design/Build Contract with ICE

Memo

To: Nueces Water Supply Corporation, Board of Directors
From: John Marez, General Manager Interim
Date: December 13, 2024
Topic: Design/Build Contract with International Consulting Engineers Inc. for Vaquero Ventures Utility Project

Background:

The Vaquero Ventures Utility Project requires the design and construction of utility extensions to support their development. After careful evaluation, International Consulting Engineers Inc. has been selected to provide these services under a Design/Build Contract. The proposed contract includes all labor, materials, and engineering services necessary to complete the project.

This agenda item is contingent upon the full execution of the Non-Standard Service Agreement (NSSA) and related easement agreements as outlined in the previous agenda item.

Analysis:

International Consulting Engineers Inc. will provide a comprehensive design and construct the necessary utility infrastructure. The work will adhere to NWSC standards and will connect with Vaquero Ventures overall design. The total cost of the project, including labor, materials, and engineering fees, is \$214,699. This amount has been reviewed and deemed reasonable for the scope and complexity of the project.

This contract will not be executed until the Non-Standard Service Agreement and associated easement agreements with Vaquero Ventures have been fully executed to protect NWSC's interests and ensure alignment between all stakeholders.

Staff Recommendation:

The following recommendations are needed to finalize this agreement:

- Approve the Design/Build Contract with International Consulting Engineers Inc. for the total project cost of \$214,699, contingent upon the successful execution of the previous agenda item.
- Authorize the General Manager or designee to execute the contract and oversee project implementation once the contingency is met.

Board Action:

- Approve the Design/Build Contract with International Consulting Engineers Inc. as presented.
- Provide authorization for the General Manager to proceed with contract execution upon fulfillment of the stated contingency.

Memo
12/13/24
Page 2 of 2

Summary:

Approval of this Design/Build Contract with International Consulting Engineers Inc. is a critical step in advancing the Vaquero Ventures Utility Project. The contract ensures the timely and cost-effective completion of the required utility extensions while maintaining compliance with NWSC standards. Your approval will allow NWSC to proceed efficiently upon satisfaction of the required contingencies.

RESOLUTION 24- 01

RESOLUTION APPROVING DESIGN/BUILD CONTRACT WITH
INTERNATIONAL CONSULTING ENGINEERS, INC. FOR
VAQUERO VENTURES UTILITY PROJECT WITH CONTINGENCY

STATE OF TEXAS §
 §
COUNTY OF NUECES §

WHEREAS, the Board of Directors of Nueces Water Supply Corporation (the “Corporation”) wishes to approve the attached Design/Build Contract with International Consulting Engineers, Inc. for Vaquero Ventures Utility Project contingent upon full execution of a Non-Standard Water Services Agreement (including Water System Extension) with Vaquero Driscoll Partners, LP.

NOW, THEREFORE, BE IT RESOLVED that the Corporation hereby approves the attached Design/Build Contract with International Consulting Engineers, Inc. for Vaquero Ventures Utility Project contingent upon full execution of a Non-Standard Water Services Agreement (including Water System Extension) with Vaquero Driscoll Partners, LP. and the Board President is hereby authorized to sign the attached Agreement as the act of the Corporation when that contingency is satisfied.

Duly adopted this the 18th day of December, 2024.

President

ATTEST:

Secretary

[SEAL]

**South Texas Water Authority (STWA) Waterline
 Installation For Vaquero Ventures Driscoll Project**

COST ESTIMATE SUMMARY

Line Item Number	Description	Unit	QTY	LINE ITEM COSTS
A1	Mobilization	LS	1	\$ 17,766.70
A2	Bond / Insurance	LS	1	\$ 5,720.88
A3	SWPP	LS	1	\$ 1,800.00
A4	6" PVC C900 DR 18 Waterline	LF	3263	\$ 130,080.00
A5	6" SS Tapping Sleeve	EA	1	\$ 4,345.00
A6	6" MJ Gate Valve	EA	2	\$ 3,560.00
A7	6"x45 DI Bend	EA	10	\$ 6,380.00
A8	Seeding	LS	1	\$ 2,350.00
A9	Asphalt Repair	LS	1	\$ 3,574.00
A10	Traffic Control	LS	1	\$ 7,500.00
A11	Construction Staking	LS	1	\$ 3,216.00
A12	Equipment	LS	1	\$ 6,702.00
A13	Project Manager	LS	1	\$ 8,160.00
			TOTAL	\$ 201,154.58

Vaquero Ventures LLC.

Installing 6" water line- allowing for additional connections on line. Vaquero Ventures w/ NWSC contributing the board approved prortion of \$17,626.99

Description	Total Cost-Labor and Materials					Vaquero Venture's Portion					NWSC's Responsibility-	
	Unit #	Unit Cost	Material Total*	Installation Total	Total*	Unit #	% Cost	Material Total	Installation Total	Total	Board approved contribution	Total
6" PVC C900 DR 18 water line	3263			\$130,080.00	\$130,080.00	3263		\$0.00	\$112,454.66	\$112,454.66		
6" Gate valve with box complete	2	\$1,780.00	\$3,560.00	\$0.00	\$3,560.00	2		\$1,780.00	\$3,560.00	\$0.00	\$3,560.00	
6" SS Tapping Sleeve	1	\$4,345.00	\$4,345.00	\$0.00	\$4,345.00	1		\$4,345.00	\$4,345.00	\$0.00	\$4,345.00	
6" x 45 DI Bend	10	\$638.00	\$6,380.00	\$0.00	\$6,380.00	10		\$638.00	\$6,380.00	\$0.00	\$6,380.00	
Mobilization	1	\$17,766.70	\$17,766.70	\$0.00	\$17,766.70	1		\$17,766.70	\$17,766.70	\$0.00	\$17,766.70	
Traffic Control	1	\$7,500.00	\$7,500.00	\$0.00	\$7,500.00	1		\$7,500.00	\$7,500.00	\$0.00	\$7,500.00	
Bond/Insurance	1	\$5,720.88	\$5,720.88	\$0.00	\$5,720.88	1		\$5,720.88	\$5,720.88	\$0.00	\$5,720.88	
SWPP	1	\$1,800.00	\$1,800.00	\$0.00	\$1,800.00	1		\$1,800.00	\$1,800.00	\$0.00	\$1,800.00	
Seeding	1	\$2,350.00	\$2,350.00	\$0.00	\$2,350.00	1		\$2,350.00	\$2,350.00	\$0.00	\$2,350.00	
Asphalt Repair	1	\$3,574.00	\$3,574.00	\$0.00	\$3,574.00	1		\$3,574.00	\$3,574.00	\$0.00	\$3,574.00	
Construction Staking	1	\$3,216.00	\$3,216.00	\$0.00	\$3,216.00	1		\$3,216.00	\$3,216.00	\$0.00	\$3,216.00	
Equipment	1	\$6,702.00	\$6,702.00	\$0.00	\$6,702.00	1		\$6,702.00	\$6,702.00	\$0.00	\$6,702.00	
Construction Manager	1	\$8,160.00	\$8,160.00	\$0.00	\$8,160.00	1		\$8,160.00	\$8,160.00	\$0.00	\$8,160.00	
Engineering Design & Proj. Manager	1	\$30,170.66	\$30,170.66	\$0.00	\$30,170.66	0		\$30,170.66	\$30,170.66	\$0.00	\$30,170.66	
Totals			\$101,245.24	\$130,080.00	\$231,325.24	Total		\$101,245.24	\$112,454.66	\$213,699.90		\$17,625.34

Vaquero Venture's Portion	\$213,699.90	Labor & Materials
Vaquero Venture's Pump Station Pro-rata share	\$27,307.70	Analysis
Vaquero Venture's Water distribution Pro-rata share	\$18,500.82	Analysis
Membership, Tap, Capital Contribution and CSI	\$2,075.00	Discount Included
Engineering Fee	\$1,200.00	Analysis
Payment	-\$1,000.00	Down Payment
Total Cost-Prorata capacity charges, Labor and Materials	\$261,783.42	
Due from Vaquero Ventures LLC	\$261,783.42	

The portion allocated to Vaquero Ventures Demand is based on the number of connections.
79g/m - 130 connections



AIA® Document A141® – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Nueces Water Supply Corporation
2302 E. Sage Rd.
Kingsville, TX 78363
361-592-1720

and the Design-Builder:
(Name, legal status, address and other information)

International Consulting Engineers LLC
261 Saratoga Blvd.
Corpus Christi, TX 78417
361-826-5805

for the following Project:
(Name, location and detailed description)

Vaquero Ventures Utilities Project
Driscoll, Texas
Design Build: Development of a new waterline extension from STWA-NWSC to the Vaquero Ventures project site located at FM 665 and US 77 in in Driscoll, Texas. The design-build project includes engineering, design and installation of 3,263 LF of 6"Ø water service line along HWY 77 Access Rd (North Bound). Professional Services to include; Site visits, Meetings and Coordination, Identification of Project Constraints, Construction Documents, and Quality Assurance. Permitting and Coordination with TxDOT and any and all utilities within its Right of Way. This design-build contract will provide the STWA, NWSC, and Vaquero Ventures with an expedited project to provide water service for the upcoming development.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

The Owner and Design-Builder agree as follows.

Init.

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(1633825358)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

3,263 LF of 6"Ø water service line along HWY 77 Access Rd (North Bound)

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

N/A

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

N/A

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

Two Hundred Thirty-one Thousand Three Hundred Eight Dollars and Forty-two Cents (\$231,308.42)

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

15 days from Notice to Proceed (NTP)

.2 Submission of Design-Builder Proposal:

Refer to AIA Document A141™-2014, Exhibit A, Design-Build Amendment

.3 Phased completion dates:

N/A

.4 Substantial Completion date:

90 days from NTP

.5 Other milestone dates:

N/A

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

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.1 Architect/Engineer

Engineering and Design:
International Consulting Engineers, LLC
261 Saratoga Blvd., Corpus Christi, TX 78417

.2 Consultants

.3 Contractors

General Contractor:
International Consulting Engineers, LLC
261 Saratoga Blvd., Corpus Christi, TX 78417

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

N/A

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Design-Builder and Contractor intend to transmit Instruments of Service or any other information or documentation in digital form, or utilize building information modeling, they shall endeavor to establish written protocols governing the development, use, transmission, reliance, and exchange of digital data, including building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

John Marez, General Manager
2302 E. Sage Rd.
Kingsville, Texas 78363
361-592-1720
jmarez@stwa.org

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

N/A

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Jesus J. Jimenez, PE
261 Saratoga Blvd.
Corpus Christi, TX 78417
361-826-5805
JJ@icengineers.net

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- [X] Arbitration pursuant to Section 14.4
- [] Litigation in a court of competent jurisdiction
- [] Other: (Specify)

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 **The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 **Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 **Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 **Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 **Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 **Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

N/A

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

N/A

Individual or Position	Rate
------------------------	------

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence; survey, design and engineering deliverables;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;

- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

(Paragraph deleted)

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

(Insert rate of monthly or annual interest agreed upon.)

3 % three percent monthly

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

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§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked

and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 **Royalties, Patents and Copyrights**

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 **Indemnification**

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 **Contingent Assignment of Agreements**

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

None

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;

Init.

- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

(Paragraphs deleted)

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test

pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make

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payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

(Paragraphs deleted)

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that

such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 **Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such

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costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the

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requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or

work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds

(Paragraph deleted)

- .6 Other:

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

John Marez General Manager

(Printed name and title)

DESIGN-BUILDER (Signature)

Jesus J. Jimenez, PE Principal

(Printed name and title)

Init.

Additions and Deletions Report for AIA® Document A141® – 2014

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

Nueces Water Supply Corporation
2302 E. Sage Rd.
Kingsville, TX 78363
361-592-1720

...

International Consulting Engineers LLC
261 Saratoga Blvd.
Corpus Christi, TX 78417
361-826-5805

...

Vaquero Ventures Utilities Project
Driscoll, Texas

Design Build: Development of a new waterline extension from STWA-NWSC to the Vaquero Ventures project site located at FM 665 and US 77 in in Driscoll, Texas. The design-build project includes engineering, design and installation of 3,263 LF of 6"Ø water service line along HWY 77 Access Rd (North Bound). Professional Services to include: Site visits, Meetings and Coordination, Identification of Project Constraints, Construction Documents, and Quality Assurance. Permitting and Coordination with TxDOT and any and all utilities within its Right of Way. This design-build contract will provide the STWA, NWSC, and Vaquero Ventures with an expedited project to provide water service for the upcoming development.

PAGE 3

3,263 LF of 6"Ø water service line along HWY 77 Access Rd (North Bound)

...

N/A

...

N/A

...

Two Hundred Thirty-one Thousand Three Hundred Eight Dollars and Forty-two Cents (\$231,308.42)

...

15 days from Notice to Proceed (NTP)

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User Notes:

(1633825358)

...

Refer to AIA Document A141™-2014, Exhibit A, Design-Build Amendment

...

N/A

...

90 days from NTP

...

N/A

PAGE 4

.1 Architect/Engineer

Engineering and Design:
International Consulting Engineers, LLC
261 Saratoga Blvd., Corpus Christi, TX 78417

...

.3 Contractors

General Contractor:
International Consulting Engineers, LLC
261 Saratoga Blvd., Corpus Christi, TX 78417

...

N/A

...

John Marez, General Manager
2302 E. Sage Rd.
Kingsville, Texas 78363
361-592-1720
jmarez@stwa.org

...

N/A

PAGE 5

Jesus J. Jimenez, PE
261 Saratoga Blvd.
Corpus Christi, TX 78417
361-826-5805
JJ@icengineers.net

...

[X] Arbitration pursuant to Section 14.4

PAGE 6

N/A

...

N/A

...

- .1 Transportation and authorized out-of-town travel and subsistence; survey, design and engineering deliverables;

PAGE 7

~~§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of — percent (—%) of the expenses incurred.~~

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

...

3 % three percent monthly

PAGE 10

None

PAGE 12

~~§ 5.6 Allowances~~

~~§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.~~

~~§ 5.6.2 Unless otherwise provided in the Design-Build Documents,~~

- ~~.1 — allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;~~
- ~~.2 — the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and~~
- ~~.3 — whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.~~

~~§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.~~

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~~§ 9.9 Partial Occupancy or Use~~

~~§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design Build Documents. When the Design Builder considers a portion substantially complete, the Design Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design Builder.~~

~~§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.~~

~~§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design Build Documents.~~

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- ~~4 AIA Document A141™ 2014, Exhibit C, Sustainable Projects, if completed.~~
- ~~5 AIA Document E202™ 2022, BIM Exhibit for Sharing Models with Project Participants, Where Model Versions May Not be Enumerated as a Contract Document, if completed, or the following:~~

:

...

John Marez General Manager

Jesus J. Jimenez, PE Principal

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Jesus J. Jimenez, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:09:17 ET on 08/14/2024 under Order No. 2114449208 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA Document A141[®] – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141TM-2014, Standard Form of Agreement Between Owner and Design-Builder dated the day of in the year (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

Vaquero Ventures Utilities Project
Driscoll, Texas

THE OWNER:
(Name, legal status and address)

Nueces County Water Supply
2302 E. Sage Rd., Kingsville, TX 78363

THE DESIGN-BUILDER:
(Name, legal status and address)

International Consulting Engineers LLC
261 Saratoga Blvd., Corpus Christi, TX 78417

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:
(Check the appropriate box.)

- Stipulated Sum, in accordance with Section A.1.2 below
- Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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[] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be Two Hundred Thirty-one Thousand Three Hundred Eight Dollars and Forty-two Cents (\$ 231,308.42), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

§ A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
Mobilization / Bonds / Insurance	1 LS	\$23,487.58
SWPP	1 LS	\$1,800.00
6" PVC C900 DR 18 Waterline	3263 LF	\$39.86
6" SS Tapping Sleeve	1 EA	\$4,345.00
6" MJ Gate Valve	2 EA	\$1,780.00
6"x45 DI Bend	10 EA	\$638.00
Seeding	1 LS	\$2,350.00
Asphalt Repair	1LS	\$3,574.00
Traffic Control	1LS	\$7,500.00
Construction Staking	1 LS	\$3,216.00
Equipment	1 LS	\$6,702.00
Project Manager	1 LS	\$8,160.00

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the 5 day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 5 day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted

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invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

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(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

(Paragraphs deleted)

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than Ninety (90) days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

N/A

Portion of Work

Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

N/A

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
A141-2014	Standard Form of Agreement between Owner and Design-Builder		32

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

Init.

Section	Title	Date	Pages
---------	-------	------	-------

§ A.3.1.3 The Drawings:
(Either list the drawings here or refer to an exhibit attached to this Amendment.)

Amendment Exhibit A - Drawings

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
N/A		

Other identifying information:

§ A.3.1.5 Allowances and Contingencies:
(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

.2 Contingencies

§ A.3.1.6 Design-Builder's assumptions and clarifications:

It is assumed that Notice to Proceed will be issued within thirty (30) days of contract execution.

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

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 User Notes:

(1851084647)

(Identify name, title and contact information.)

.1 Superintendent

Juan Charles, Superintendent, juan.charles@icengineers.net

.2 Project Manager

Itzak Hinojosa, Project Manager, Itzak@icengineers.net

.3 Others

Principal: Jesus J. Jimenez (████████████████████)
Contract Manager: Beatriz Charo (Beatriz@icengineers.net)

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site. (Included in Section A.1.2)

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
Project Manager	Part-time	\$136.00	Hourly

(Paragraph deleted)

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

(Paragraph deleted)

§ A.5.1.2 **Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

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§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1:7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

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§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

(Paragraphs deleted)

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

<p>OWNER <i>(Signature)</i></p> <p>John Marez General Manager</p> <p><i>(Printed name and title)</i></p>	<p>DESIGN-BUILDER <i>(Signature)</i></p> <p>Jesus J. Jimenez, PE Principal</p> <p><i>(Printed name and title)</i></p>
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Int.

Additions and Deletions Report for AIA® Document A141® – 2014 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:12:34 ET on 08/14/2024.

PAGE 1

Vaquero Ventures Utilities Project
Driscoll, Texas

...

Nueces County Water Supply
2302 E. Sage Rd., Kingsville, TX 78363

...

International Consulting Engineers LLC
261 Saratoga Blvd., Corpus Christi, TX 78417

...

[X] Stipulated Sum, in accordance with Section A.1.2 below

PAGE 2

§ A.1.2.1 The Stipulated Sum shall be Two Hundred Thirty-one Thousand Three Hundred Eight Dollars and Forty-two Cents (\$ 231,308.42), subject to authorized adjustments as provided in the Design-Build Documents.

...

<u>Mobilization / Bonds / Insurance</u>	<u>1 LS</u>	<u>\$23,487.58</u>
<u>SWPP</u>	<u>1 LS</u>	<u>\$1,800.00</u>
<u>6" PVC C900 DR 18 Waterline</u>	<u>3263 LF</u>	<u>\$39.86</u>
<u>6" SS Tapping Sleeve</u>	<u>1 EA</u>	<u>\$4,345.00</u>
<u>6" MJ Gate Valve</u>	<u>2 EA</u>	<u>\$1,780.00</u>
<u>6"x45 DI Bend</u>	<u>10 EA</u>	<u>\$638.00</u>
<u>Seeding</u>	<u>1 LS</u>	<u>\$2,350.00</u>
<u>Asphalt Repair</u>	<u>1LS</u>	<u>\$3,574.00</u>
<u>Traffic Control</u>	<u>1LS</u>	<u>\$7,500.00</u>
<u>Construction Staking</u>	<u>1 LS</u>	<u>\$3,216.00</u>
<u>Equipment</u>	<u>1 LS</u>	<u>\$6,702.00</u>
<u>Project Manager</u>	<u>1 LS</u>	<u>\$8,160.00</u>

~~§ A.1.3 Cost of the Work Plus Design-Builder's Fee~~

~~§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.3.2 The Design Builder's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)~~

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User Notes:

(1851084647)

~~§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price~~

~~§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.4.2 The Design-Builder's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)~~

~~§ A.1.4.3 Guaranteed Maximum Price~~

~~§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed (\$), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.~~

~~(Insert specific provisions if the Design-Builder is to participate in any savings.)~~

~~§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price~~

~~Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price. (Provide information below or reference an attachment.)~~

~~§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:~~

~~(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)~~

~~§ A.1.4.3.4 Unit Prices, if any:~~

~~(Identify item, state the unit price, and state any applicable quantity limitations.)~~

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

~~§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:~~

...

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the 5 day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 5 day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

PAGE 3

- 1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum

- allocated to that portion of the Work in the schedule of values, less retainage of five percent (5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5 %);

PAGE 4

~~§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee~~

~~§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design Builder through the end of the period covered by the Application for Payment and for which Design Builder has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ A.1.5.3.2 Subject to other provisions of the Design Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~1 Take the Cost of the Work as described in Article A.5 of this Amendment;~~
- ~~2 Add the Design Builder's Fee, less retainage of — percent (— %). The Design Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~3 Subtract retainage of — percent (— %) from that portion of the Work that the Design Builder self-performs;~~
- ~~4 Subtract the aggregate of previous payments made by the Owner;~~
- ~~5 Subtract the shortfall, if any, indicated by the Design Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.~~

~~§ A.1.5.3.3 The Owner and Design Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design Builder shall execute agreements in accordance with those terms.~~

~~§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price~~

~~§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design Builder on account of that portion of the Work for which the Design Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

~~§ A.1.5.4.2 Subject to other provisions of the Design Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.~~
- ~~2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;~~

- ~~3~~ Add the Design-Builder's Fee, less retainage of ~~—~~ percent (~~—~~ %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- ~~4~~ Subtract retainage of ~~—~~ percent (~~—~~ %) from that portion of the Work that the Design-Builder self-performs;
- ~~5~~ Subtract the aggregate of previous payments made by the Owner;
- ~~6~~ Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- ~~7~~ Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

~~§ A.1.5.4.3~~ The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

...

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than Ninety (90) days from the date of this Amendment, or as follows:

...

N/A

...

N/A

...

A141-2014

Standard Form of Agreement between Owner and Design-Builder

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PAGE 5

Amendment Exhibit A - Drawings

...

N/A

...

It is assumed that Notice to Proceed will be issued within thirty (30) days of contract execution.

PAGE 6

Juan Charles, Superintendent, juan.charles@icengineers.net

...

Itzak Hinojosa, Project Manager, Itzak@icengineers.net

...

Principal: Jesus J. Jimenez (jesus@icengineers.net)
Contract Manager: Beatriz Charo (Beatriz@icengineers.net)

...

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site. (Included in Section A.1.2)

...

<u>Project Manager</u>	<u>Part-time</u>	<u>\$136.00</u>	<u>Hourly</u>
------------------------	------------------	-----------------	---------------

~~§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.~~

PAGE 8

~~.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.~~

PAGE 9

~~§ A.5.4 Other Agreements~~

~~§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.~~

...

John Marez General Manager

Jesus J. Jimenez, PE Principal

Certification of Document's Authenticity
AIA® Document D401™ – 2003

I, Jesus J. Jimenez, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:12:34 ET on 08/14/2024 under Order No. 2114449208 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA Document A141[®] – 2014 Exhibit B

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

Vaquero Ventures Utilities Project
Driscoll, Texas

THE OWNER:

(Name, legal status and address)

Nueces County Water Supply Corporation
2302 E. Sage Rd.
Kingsville, TX 78363
361-592-1720

THE DESIGN-BUILDER:

(Name, legal status and address)

International Consulting Engineers LLC
261 Saratoga Blvd.
Corpus Christi, TX 78417
361-826-580

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the ____ day of ____ in the year ____.

(In words, indicate day, month and year.)

TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS**
- B.3 OWNER'S INSURANCE**
- B.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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User Notes:

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(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

N/A

§ B.2.1.1 Commercial General Liability with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) for each occurrence and One Million Dollars and Zero Cents (\$ 1,000,000.00) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) per claim and One Million Dollars and Zero Cents (\$ 1,000,000.00) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

One Million Dollars and Zero Cents (\$1,000,000.00) per Occurrence and Two Million Dollars and Zero Cents (\$2,000,000.00 in the aggregate.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) per claim and One Million Dollars and Zero Cents (\$ 1,000,000.00) in the aggregate.

(Paragraphs deleted)

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 **Additional Insured Obligations.** The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 **Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter

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upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Performance and Payment Bonds	\$4,516.84

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE B.3 OWNER'S INSURANCE

§ B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

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§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

N/A

Additions and Deletions Report for AIA® Document A141® – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:14:09 ET on 08/14/2024.

PAGE 1

Vaquero Ventures Utilities Project
Driscoll, Texas

...

Nueces County Water Supply Corporation
2302 E. Sage Rd.
Kingsville, TX 78363
361-592-1720

...

International Consulting Engineers LLC
261 Saratoga Blvd.
Corpus Christi, TX 78417
361-826-580

PAGE 2

N/A

§ **B.2.1.1** Commercial General Liability with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) for each occurrence and One Million Dollars and Zero Cents (\$ 1,000,000.00) in the aggregate providing coverage for claims including

...

§ **B.2.1.2** Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) per claim and One Million Dollars and Zero Cents (\$ 1,000,000.00) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

...

One Million Dollars and Zero Cents (\$1,000,000.00) per Occurrence and Two Million Dollars and Zero Cents (\$2,000,000.00 in the aggregate.

§ **B.2.1.6** Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) per claim and One Million Dollars and Zero Cents (\$ 1,000,000.00) in the aggregate.

~~§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$) per claim and (\$) in the aggregate.~~

~~§ B.2.1.7.1 The Design Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$) per claim and (\$) in the aggregate.~~

PAGE 3

Performance and Payment Bonds

\$4,516.84

PAGE 5

N/A