PORT OF HOUSTON AUTHORITY
BELTWAY 8 DMPA SITE PREPARATION

DWG NO: C95-D13-001
MARCH 13, 2020

VICINITY MAP

LOCATION MAP

65% DRAFT
8. All waterside operations shall be approved, in advance, by PHA.

Table of Pipeline Owner, Description, and Location:

<table>
<thead>
<tr>
<th>Pipeline Owner</th>
<th>Description</th>
<th>Location</th>
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</thead>
<tbody>
<tr>
<td>Enterprise</td>
<td>8&quot; gas - underground</td>
<td>Northern boundary</td>
</tr>
<tr>
<td>Enterprise</td>
<td>24&quot; gas – underground</td>
<td>Northern boundary</td>
</tr>
<tr>
<td>Coastal Water Authority</td>
<td>108&quot; water – underground</td>
<td>Northern boundary</td>
</tr>
<tr>
<td>Enterprise</td>
<td>16&quot; gas – underground</td>
<td>Northern boundary</td>
</tr>
<tr>
<td>Kinder Morgan</td>
<td>24&quot; gas – underground</td>
<td>Northern boundary</td>
</tr>
<tr>
<td>Enterprise</td>
<td>30&quot; gas – underground</td>
<td>Northern boundary</td>
</tr>
<tr>
<td>Enterprise</td>
<td>30&quot; gas – underground</td>
<td>Western boundary</td>
</tr>
<tr>
<td>Enterprise</td>
<td>30&quot; gas – underground</td>
<td>Western boundary</td>
</tr>
<tr>
<td>Kinder Morgan</td>
<td>6&quot; gas – underground</td>
<td>Southeastern interior</td>
</tr>
<tr>
<td>Enterprise</td>
<td>6&quot; gas – underground</td>
<td>Southern interior</td>
</tr>
<tr>
<td>Enterprise</td>
<td>12&quot; gas – underground</td>
<td>Southern interior</td>
</tr>
<tr>
<td>Enterprise</td>
<td>8&quot; gas – underground</td>
<td>Southeastern interior</td>
</tr>
<tr>
<td>Enterprise</td>
<td>24&quot; gas – underground</td>
<td>Southeastern interior</td>
</tr>
<tr>
<td>Kinder Morgan</td>
<td>12&quot; gas - underground</td>
<td>Southwestern interior</td>
</tr>
</tbody>
</table>
9. Existing Pipe lines: The contractor is to avoid damage to existing pipelines within the site and surrounding areas by leaving a 30 foot buffer undisturbed centered on the pipeline. Identified pipelines are shown in the table on this sheet. Protect existing pipelines that are indicated to remain from damage. Notify the Contract Representative immediately of damage to or an encounter with an unknown existing pipeline. The Contractor will be responsible for repairs of damage to existing pipelines that are indicated or made known to the Contractor prior to start of clearing and grubbing operations. When pipelines which are to be removed are encountered within the area of operations, notify the Contract Representative in ample time to minimize interruption of the service.

Environmental:

1. Reports related to explosive residue tests at the concrete bunkers are available for review (Pending). No asbestos in allowable limits was detected in the bunkers. The contractor is responsible for reviewing the explosive reports and complying with the recommendations and restrictions.

2. Contractor shall keep construction activities under surveillance, management, and control to minimize interference with, disturbance to, and damage of fish and wildlife. Contractor has listed species that require special attention and measures for their continued protection within the USACE Federal Authorization (January 2020 FEIS). The contractor is responsible for reading and complying with all federal, state, and local permit’s regulations and conditions, including not to limit discharges from the site.

3. Contractor shall keep construction activities under surveillance, management, and control to avoid pollution of surface and ground waters. As soon as possible Contractor shall clear all waterways requiring temporary fill, matting, debris, or other obstructions placed during clearing and grubbing that are not part of the finished work. Contractor is responsible for maintaining area drainage during clearing and grubbing activities. Wetlands are present on the site and are shown on the plans. Impacts to wetlands are covered under the USACE Federal authorization (January 2020 FEIS). Wetlands are present on the site and are shown on the plans. Impacts to wetlands are covered under the USACE Feasibility/Federal authorization.

4. The contractor is responsible for preparing and implementing the SWPPP, which must be approved prior to commencing construction after award. The contractor is responsible for the risk assessment analysis, planning, preparation and implementation of the SWPPP.

5. A migratory bird nest and water bird rookery survey must be completed before trees and woody vegetation are removed. This survey will be completed by Port of Houston authority. Contractor shall give Port Representative at least 3 weeks advance notice before start of work. Nests of migratory birds may be present on site. If active nest is encountered, avoid disturbing the nest or associated vegetation and consult with the PHA and Texas Parks and Wildlife Department (11WU) regard compliance with the Migratory Bird Treaty Act of 1918 (MBA). TPWD recommends that the bird species that use the project area be identified and best management practices for avoiding harassment and harm to migratory birds be implemented. In accordance with the MBA, TPWD recommends that vegetation removal and ground disturbing activities be phased to occur outside of the nesting season (March 15 to September 15) and impacts to spring and fall migrants be avoided. Construction noise that could harass nesting birds should be phased to occur outside of the nesting season as well. Additional information regarding the MBA may be obtained through the USFWS Region 2 Migratory Bird Permit Office at (505) 248-7882 or online at http://www.fws.gov/birds/Permits-Fact-Sheet.pdf.

6. Contractor shall keep construction activities under surveillance, management, and control to minimize solution of air resources. All activities, equipment, processes, and work operated by Contractor or performed by Contractor in accomplishing the clearing and grubbing shall be in accordance with the State of Texas Clean Air Act implemented in 1987, and all Federal emission and performance laws and standards. Ambient Air Quality Standards by the Environmental Protection Agency shall be maintained for those construction activities specified in this section.

Access:

Contractor will access site via the temporary access road and route as shown in the plans. The Contractor shall construct a temporary access road within the Easement shown. A minimum of 2 Flagger’s are required for controlling traffic on the access road. The road width shall be at least as wide as shown on plans. The Contractor shall construct access road with materials that are suitable for the traffic and loads anticipated. The contractor is responsible for the drainage and maintenance of the temporary road. Drainage shall be maintained in its current state. The Contractor shall maintain at least the same condition of Easement for the entire contract duration- same condition is defined as the recorded condition on day of contract execution. Upon completion of the project, the access road shall be graded and restored smooth beyond the original/existing condition. There is no guarantee on the existing soil conditions with regards to their quality and load bearing ability. It is the contractor’s responsibility to make all necessary ground improvements required for their use. Improvements, repairs and maintenance are the responsibility of the contractor. Permission access crosses HCTRA ROW which is an active construction site. Crossing Harris County’s (HCTRA) ROW is subject to:

1. Use of the premises shall not inhibit or conflict with the County’s own use or the use of others permitted by the County.
2. County specifically reserves the right to not only utilize the Premises for its own purpose, but also to permit or license additional third parties to use the premises.
3. The access road traverses through a highly active construction site with specific construction activities that may impede the safe passage of traffic along the access road. When in HCTRA’s sole opinion, conditions do not permit safe passage, HCTRA may restrict access to the access road. If safe passage cannot be permitted due to scheduled construction activities, HCTRA will provide as much notice as possible to PHA prior to restricting access to the access road.
4. The Contractor’s attention is called to the fact that there may be other contractors operating within and adjacent to the limits of this project. The Contractor shall be responsible for becoming familiar with the plans for all adjacent contracts and/or projects, and coordinate with projects’ work to minimize interruptions or delays to the traveling public and the adjacent projects.
5. PHA agrees to comply with such other rules as the County may adopt and communicate to PHA from time to time in order to use the access road to remain safe to both drivers and construction crews working in the area.
6. Access is only for the temporary use during the clearing of the PHA property known as BW B DMPA site.
GENERAL NOTES

Clearing and Grubbing:

1. Clearing consists of the removal and satisfactory disposal of all objectionable and/or obstructionsal matter above ground. This includes all trees, shrubs, downed timber, snags, slash, vegetation, brush, garbage, trash, rubbish, debris, fencing, broken concrete, and other debris items occurring in the designated clearing area.

2. Grubbing consists of the removal and satisfactory disposal of stumps and roots larger than 3 inches in diameter to a minimum depth of 12 inches below the existing grade and matted roots or other intrusions from the designated grubbing area. Depressions excavated below the original ground surface for or by the removal of stumps and roots shall be filled with satisfactory material and compacted so the surface will conform to the surrounding ground surface.

3. Clearing operations are to be constructed to provide for the safety of employees and others. Blasting trees and stumps will not be permitted.

4. Trees and vegetation to be left standing are to be protected from damage incident to clearing, grubbing, and construction operations by the erection of barriers or other methods as the circumstances require.

5. Mulching or chipping cut material in place prior to removal from the site is permitted.

6. Burning will not be permitted on site.

7. Rubbish, timber, automobile tires, piling, riprap, and other objectionable materials are to be completely removed from the area within the designated clearing/grubbing limits.

8. Materials obtained from clearing, grubbing, and removal of debris operations are to be removed from the site and disposed of in approved locations.

9. Debris consisting of inert and essentially insoluble industrial solid wastes including, but not limited to, rock, brick, dirt, concrete, shingles, and glass materials that are not readily decomposable, and that are categorized as Class III wastes, are to be removed from the site and disposed of in the designated disposal area. Class III wastes are defined in Title 30, Part 1, Chapter 335, Subchapter A, Rule 335.1 of the Texas Administrative Code.

10. Debris consisting of trees, shrubs, and logs are to be disposed of in a Type IV landfill as approved.

11. Other classes of waste materials including, but not limited to, metal, plastic, and rubber are to be disposed of in appropriate areas furnished by the Contractor.

12. Automobiles, abandoned boats, and tires are to be disposed of in a Type VIII landfill as approved.

13. Contractors bid includes compensation for clearing, grubbing, and debris removal; loading, hauling, and salvaging or disposing of the material; and equipment, labor, tools, and incidentals.

Removing Concrete:

1. The goal is to remove all existing concrete from within the delineated boundaries.

2. Contractor accepts ownership and will properly dispose of broken concrete according to federal, state, and local regulations.

3. Contractors bid proposal includes compensation for breaking the concrete, loading, hauling, and salvaging or disposing of the material; and equipment, labor, tools, and incidentals.

4. Ditches shall be reshaped to original lines to allow drainage, including where concrete culverts and drainage crossings are removed.

5. In locations where the concrete overlays existing pipelines, hand excavation is to occur first to determine the depth of concrete, which is anticipated to extend 9 inches. Depth of excavation is to be tightly controlled over existing pipelines to avoid any impacts to the pipelines.

6. Contractor shall smooth out disturbed areas left from removal of concrete so the surface will comply to the surrounding ground surface.
HORIZONTAL ALIGNMENT DATA

Beginning chain & ACCESS RD description

Point 001  X 3,188,514.0618 Y 13,844,641.0071 Sta 100+00.00
Course from 001 to 002 S 86° 19' 57.90" E Dist 265.2684
Point 002  X 3,188,776.7870 Y 13,844,624.0400 Sta 102+65.27
Course from 002 to 003 S 73° 32' 41.96" E Dist 346.4052
Point 003  X 3,189,111.0042 Y 13,844,525.9164 Sta 108+28.68
Course from 003 to 004 S 67° 44' 30.44" E Dist 217.0024
Point 004  X 3,189,311.8370 Y 13,844,443.7200 Sta 106+11.67
Course from 004 to 005 S 89° 32' 20.93" E Dist 74.5133
Point 005  X 3,189,386.3478 Y 13,844,443.1207 Sta 109+03.19

NOTE:
X & Y COORDINATES SHOWN ARE REFERENCED TO THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE. GRID VALUES ARE OBTAINED BY DIVIDING SURFACE VALUE BY SCALE FACTOR OF 1.00013.
NOTES:
1. TEMPORARY ACCESS ROAD SHALL BE LAID OUT BY A PROFESSIONAL LAND SURVEYOR, REGISTERED IN TEXAS.
2. THE CONTRACTOR SHALL PLACE THE ROADWAY WITHIN THE EASEMENT PROVIDED, THE ALIGNMENT CAN BE ADJUSTED AS LONG AS ALL WORK REMAINS IN THE APPROVED EASEMENT.
3. THE CONTRACTOR CAN PLACE MATERIAL THEY REQUIRE TO PROVIDE ACCESS TO THE PROPERTY.
4. AFTER COMPLETION OF PROJECT, CONTRACTOR SHALL LEAVE ALL MATERIALS PLACED, RETURNING THE AREA TO CONDITIONS THAT ARE EQUAL OR BETTER THAN EXISTING.
5. THERE ARE SOME AREAS ALONG THE ALIGNMENT THAT ARE USEABLE AS IS. IN THESE AREAS, THIS MATERIAL CAN BE USED AND WILL NOT NEED TO BE REPLACED OR IMPROVED.
6. BW 8 IS BEING RECONSTRUCTED WITHIN THIS AREA AND ALL WORK WITHIN THEIR PROJECT AREA SHALL BE COORDINATED WITH HARRIS COUNTY TOLL ROAD AUTHORITY. THERE MAY BE TIMES WHEN ACCESS UNDER BW 8 WILL NOT BE ALLOWED.
NOTES:
1. ALL CONCRETE AS TO BE REMOVED AND OVENISED OFF SITE. INCLUDING CONCRETE GRADE BEAMS BELOW NATURAL GRADE.
2. REFER TO AS-BUILT DRAWINGS FOR EXACT DIMENSIONS.
3. THERE ARE 25 BUNKERS TO BE REMOVED FROM THE SITE.
4. AS-BUILT SCALE ARE NO LONGER VALID.
PORT OF HOUSTON AUTHORITY

CONTRACT AND ADDITIONAL DOCUMENTS

FOR

BW 8 DMPA SITE PREPARATION

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PROJECT & CONSTRUCTION MANAGEMENT
PORT OF HOUSTON AUTHORITY
LONG FORM GENERAL CONDITIONS
FOR CONSTRUCTION WORK ON PORT OF HOUSTON AUTHORITY PROPERTY

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Long Form General Conditions
(Form Revision Date: May 2018)
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LONG FORM GENERAL CONDITIONS
FOR CONSTRUCTION WORK ON PORT OF HOUSTON AUTHORITY PROPERTY

SECTION 1. DEFINITIONS OF TERMS

Whenever in these General Conditions and in the other Contract Documents, the following terms are used, the intent and meaning shall be interpreted as set out below.

1.01 Addenda:

“Addenda” are the documents issued by the Port of Houston Authority after the initial Bid/Proposal Request has been issued to bidders/proposers and prior to the acceptance of bids/proposals.

1.02 Applicable Law:

“Applicable Law” means any and all federal, state and local statutes, laws, rules, regulations, ordinances, codes and rules of common law pertaining to the Contractor’s services, the Site, the Contractor’s employees and Subcontractor’s employees and/or the Work, including, without limitation (i) Environmental Laws, (ii) those pertaining to equal opportunity, affirmative action and discrimination, (iii) those pertaining to health or safety, and (iv) those pertaining to immigration.

1.03 Baseline Schedule:

“Baseline Schedule” shall have the meaning set forth in Section 6.04(a).

1.04 Bid/Proposal:

The “Bid/Proposal” is the Contractor’s bid or proposal submitted in connection with the Work, as such bid or proposal may be modified and agreed to or ordered, in each case, in writing, by the Port of Houston Authority.

1.05 Bid/Proposal Request:

The “Bid/Proposal Request” are those documents issued by the Port of Houston Authority soliciting bids/proposals, including any Addenda.

1.06 Bonds:

The “Bonds” are the performance and payment bonds that the Contractor is required to furnish to the Port of Houston Authority pursuant to Section 2.09.

1.07 Change:

The term “Change” means any change, modification, adjustment, revision, addition to, deletion from or alteration in the Work or the terms of any Contract Document, including, without limitation, the Contract Price or Contract Time.

1.08 Change Orders:

A “Change Order” is a written document agreed to and executed by the Port of Houston Authority and Contractor after Contract execution and in accordance with the Contract Documents setting forth a Change.
1.09 Change Proposal:

"Change Proposal" shall have the meaning set forth in Section 8.04.

1.10 Claim:

A “Claim” is a claim, demand or assertion by the Contractor seeking for itself or on behalf of a Subcontractor or Supplier: adjustment or interpretation of any Contract term, including without limitation, adjustment of the Contract Price or Contract Time; payment of money; relief from obligations; or other relief or recovery with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question asserted by the Contractor (whether for itself or on behalf of a Subcontractor or Supplier) arising out of or relating to the Contract.

1.11 Concurrent Delay:

“Concurrent Delay” is a delay to any activity caused in whole or in part, or contributed to by any primary, concurrent or contributorily negligent acts or omissions by the Contractor, its Subcontractors or Suppliers, or which arises from any other failure by Contractor or its Subcontractors or Suppliers to perform their respective obligations in accordance with the Contract Documents. A Concurrent Delay remains a Concurrent Delay even though the Port of Houston Authority or any of the Port of Houston Authority’s other contractors or any other persons or entities for which the Port of Houston Authority is responsible are concurrently or contributorily negligent or otherwise the cause of delay to the work.

1.12 Construction Change Directive:

A “Construction Change Directive” is a document issued and signed by the Port Contract Representative directing the Contractor to make a minor Change in the Work, which Change shall not require any modification of the Contract Price.

1.13 Construction Manager:

“Construction Manager” shall mean the person designated as such for the Project by the Port Construction Representative. The Port Construction Representative may change the Construction Manager from time to time by notice to the Contractor.

1.14 Contract and Contract Documents:

The “Contract Documents” are composed of the Contract agreement signed by the Port of Houston Authority and Contractor, these General Conditions, Special Conditions, Specifications and Drawings, the Purchase Order, and Modifications. The Contract Documents form the “Contract”.

1.15 Contract Price:

The “Contract Price” is the amount set forth in the Contract agreement, as such amount may be modified by Change Order, which the Contractor is entitled to receive for full, complete and timely performance of the Work in accordance with the Contract Documents.

1.16 Contract Time:

The “Contract Time” is the time period set forth in the Contract for the Contractor to substantially complete the Work. The Contract Time may be expressed in number of calendar days or number of Working Days or by reference to the date of Substantial Completion. If the Contract Time is measured by
calendar days, each and every calendar day shall be counted against the Contract Time. If the Contract Time is measured by Working Days, Saturdays, Sundays and Associated General Contractors of America ("AGC") holidays shall not be counted against the Contract Time. If the Contract Time is measured by calendar days or Working Days, the measurement shall be made from the Start Work Date.

1.17 **Contractor:**

A “Contractor” means the independent contractor which is named in the Contract agreement and is responsible for the Work.

1.18 **Contractor Proprietary Information:**

“Contractor Proprietary Information” shall have the meaning set forth in Section 2.05.

1.19 **Day or day:**

“Day” or “day” means calendar day.

1.20 **Design Consultant:**

“Design Consultant” means an independent architect or engineer with responsibility for design of the Work. The Design Consultant is an independent contractor and not an employee or agent of the Port of Houston Authority.

1.21 **Drawings:**

The “Drawings” are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, which Contract Documents may include without limitation plans, views, elevations, sections, details, schedules or diagrams.

1.22 **Environmental Laws:**

“Environmental Laws” means any and all applicable federal, state or local statutes, laws, rules, regulations, ordinances, codes and rules of common law now in effect and any current judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, or judgment, relating to pollution or protection of human health, natural resources or the environment, Releases or threatened Releases of Hazardous Substances, or generation, manufacture, processing, distribution, use, treatment, storage, handling, transport or disposal, or arrangement for transport or disposal of, or exposure to, Hazardous Substances. Without limiting the foregoing, Environmental Laws includes the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq.; the Hazardous Materials Transportation Law, 49 U.S.C. §§ 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 3008, et seq., the Federal Insecticide, Fungicide, and Rotenicide Act, 7 U.S.C. §§ 136, et seq.; and the Occupational Safety and Health Act, 29 U.S.C. §§ 651, et seq., as each has been amended from time to time and is now in effect, and all other environmental conservation and protection laws, in each case as has been amended from time to time and is now in effect.
1.23 **Equipment and Materials:**

“Equipment and Materials” means the equipment, materials, supplies, systems, implements, tools, appliances and other installations to be supplied or supplied by the Contractor, its Subcontractors and Suppliers, whether incorporated or otherwise used in connection with the Work.

1.24 **Field Supervisor:**

“Field Supervisor” shall have the meaning set forth in Section 4.27.

1.25 **Final Completion:**

“Final Completion” shall have the meaning set forth in Section 6.12.

1.26 **Force Majeure:**

The term “Force Majeure” shall have the meaning set forth in Section 6.15.

1.27 **Governmental Authority:**

“Governmental Authority” means (a) the United States of America or any foreign country, (b) any state, county, municipality or other governmental subdivision within the United States of America or any foreign country, and (c) any court or any governmental department, commission, board, bureau, agency or other instrumentality of the United States of America or any foreign country, or of any state, county, municipality or other governmental subdivision within the United States of America or any foreign country.

1.28 **INTENTIONALLY OMITTED**

1.29 **Hazardous Substances:**

“Hazardous Substances” means:

(i) any chemical, product, material, substance or waste defined as or included in the definition of “hazardous material,” “hazardous waste,” “hazardous substance,” “extremely hazardous substance,” “toxic substance,” “solid waste,” “toxic waste,” “restricted hazardous waste,” “contaminant,” “pollutant,” and “toxic pollutant” or words of similar meaning or import found in any Environmental Law;

(ii) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite and/or actinolite, whether friable or non-friable;

(iii) any polychlorinated biphenyls (“PCBs”), or PCB-containing materials or fluids;

(iv) radon;

(v) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;
(vi) any pollutant or contaminant (including petroleum, petroleum hydrocarbons, petroleum products, petroleum substances, crude oil or any fraction or derivative thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas, manufactured gas or any mixture thereof) which in its condition, concentration or area of Release could have a significant effect on human health, the environment, or natural resources;

(vii) any substance that, whether by its nature or its use, is subject to regulation or may result in liability under any Environmental Law or with respect to which any Environmental Law or Governmental Authority requires environmental investigation, monitoring or remediation; and

(viii) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Texas Water Code Annotated Section 26.344; and Title 30, Chapter 334 of the Texas Administrative Code), whether empty, filled or partially filled with any substance.

1.30 Inspectors:

The “Inspectors” are the individuals assigned by the Port Construction Representative (which individuals may be third party contractors) to make inspections and observations of any or all portions of the Work and Equipment and Materials associated with the Contract and Contractor’s performance of the Contract.

1.31 Insurance Certificates:

The “Insurance Certificates” shall mean the proof of insurance that the Contractor is required to furnish to the Port of Houston Authority pursuant to the Contract Documents.

1.32 Intellectual Property Rights:

“Intellectual Property Rights” shall mean: (a) all software, source code and object code, and modifications (including software under development), ideas and discoveries and inventions (whether or not patentable), trade secrets, information (confidential or otherwise), technical data, techniques, processes, methods, plans, designs, drawings, schematics, specifications, communications protocols, test procedures, algorithms, technology, know-how, customer lists, marketing and customer information, documentation, materials and works of authorship which are the subject matter of copyright, regardless of how embodied; and (b) all intangible intellectual property rights therein, including the right to make, sell, license or otherwise distribute, and use, and any and all applications for United States or foreign patents or issued patents; all trademarks, service marks, trade names, or trade dress, and all pending or issued United States or foreign registrations thereof; and copyrights and United States and foreign applications and registrations thereof, including the rights to copy, sell, license or otherwise distribute, display, publish and create derivative works therefrom.
1.33 **Knowledge / Recognize / Discover:**

The term “knowledge,” “recognize,” and “discover,” their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows, recognizes and discovers. The term “should know,” “should recognize” or “should discover” and their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall mean that which the Contractor should know, recognize or discover in the exercise of the Standard of Care required by the Contract Documents. Analogously, the expressions “inferable”, “reasonably inferable” and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the Standard of Care required of the Contractor by the Contract Documents.

1.34 **Limits of Construction:**

The term “limits of construction” as identified throughout the Contract Documents shall be the physical limit of construction that will constitute the completed Work at ground surface level. The limits of Work required to construct the Project to the limits of construction may be required to extend beyond the limits of construction and into separate contractor's sites and vice versa. In some instances, utilities and earthwork may be required to extend underground beyond the limits of construction to accommodate existing Site conditions or requirements in the drainage swales.

1.35 **Losses:**

The term “Losses” shall have the meaning set forth in Section 11.08.

1.36 **Milestone:**

The term “Milestone” means separately stated time(s), if any, set forth in the Special Conditions and any Modifications for Substantial Completion of specified portions of the Work.

1.37 **Modification:**

A “Modification” is (1) a written amendment to the Contract signed by both the Contractor and the Port of Houston Authority, (2) a Change Order, (3) a Construction Change Directive, or (4) a written interpretation of the Contract Documents issued by the Port Contract Representative. The Contract may be amended or modified only by a Modification.

1.38 **MOSS:**

“MOSS” shall have the meaning set forth in Section 4.10(g).

1.39 **Notice to Proceed:**

The term “Notice to Proceed” shall have the meaning set forth in Section 6.01.
1.40 **Own Forces:**

“Own Forces” means actual field labor performed at the Site by Contractor’s employees under the immediate supervision of Contractor’s Field Supervisor. By way of example only, the following is not Work performed by Contractor’s Own Forces:

a. Work performed by Subcontractors or contract laborers; or

b. Work performed in the Contractor’s office or anywhere other than in the field at the Site, even if performed by the Contractor’s employees.

1.41 **Port Contract Representative:**

The “Port Contract Representative” is the individual designated as such in or pursuant to the Special Conditions.

1.42 **Port Construction Representative:**

The “Port Construction Representative” is the individual designated as such in or pursuant to the Special Conditions.

1.43 **Port of Houston Authority:**

The Port of Houston Authority of Harris County, Texas is a political subdivision of the State of Texas and a body politic. The terms “Port,” “Port of Houston Authority” and “Port Authority” are synonymous with the Port of Houston Authority of Harris County, Texas. The Port Authority is independent and not a part of the government of Harris County, Texas or the City of Houston.

1.44 **Port of Houston Authority Commission or Commission:**

“Port of Houston Authority Commission”, “Port Commission” or “Commission” refers to the Port of Houston Authority Commission which governs the Port of Houston Authority. The commission meets monthly and is comprised of a chairman and six commissioners. The Commission is the ultimate governing authority of all Port of Houston Authority operations.

1.45 **Port of Houston Authority Indemnitees:**

The “Port of Houston Authority Indemnitees” means the Port of Houston Authority and its Commissioners, directors, officers, agents and employees.

1.46 **Product Data:**

“Product Data” means manufacturers’ standard schematic drawings, catalog sheets, brochures, diagrams, schedules, performance charts, illustrations, Material Safety Data Sheets (MSDS) or any other descriptive items.

1.47 **Progress Schedule:**

“Progress Schedule” shall have the meaning set forth in Section 6.05.
1.48 **Project:**

The “Project” is the total Port of Houston Authority construction project of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Port of Houston Authority or by separate contractors.

1.49 **Purchase Order:**

The “Purchase Order” is the written and fully executed purchase order covering the Work and issued to the Contractor in accordance with the Contract Documents.

1.50 **Purchasing Manager:**

The “Purchasing Manager” is the purchasing manager of the Port of Houston Authority.

1.51 **Release:**

“Release” means any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing.

1.52 **Request for Information or RFI:**

“Request for Information” or “RFI” means written request from the Contractor to the Port Construction Representative requesting information in respect of, an interpretation of, or direction with respect to a requirement or provision of the Contract Documents. Neither an RFI nor a response to an RFI is a Contract Document.

1.53 **Revised Baseline Schedule:**

“Revised Baseline Schedule” shall have the meaning set forth in Section 6.04(b).

1.54 **Samples:**

“Samples” are physical examples which illustrate Equipment and Materials or workmanship and establish standards by which the Work will be judged.

1.55 **Schedule of Costs:**

“Schedule of Costs” shall have the meaning set forth in Section 10.01.

1.56 **Schedule of Submittals:**

“Schedule of Submittals” shall have the meaning set forth in Section 4.10(b).

1.57 **Shop Drawings:**

“Shop Drawings” are drawings, diagrams, schedules and other data specially provided for the Work by the Contractor, its Subcontractors or Suppliers to illustrate how certain specific Work components fit together and will be located in relation to each other.
1.58 **Site:**

The “Site” is the physical location of the Project identified as such in the Contract agreement.

1.59 **Site Health and Safety Coordinator or SHSC:**

“Site Health and Safety Coordinator” or “SHSC” shall have the meaning set forth in Section 3.06.

1.60 **Special Conditions:**

“Special Conditions” means the Special Conditions issued by the Port of Houston Authority in connection with and for the Project.

1.61 **Specifications:**

The “Specifications” are that portion of the Contract Documents consisting of the written requirements for Equipment and Materials, construction systems, standards and workmanship for the Work and performance of related services, and include the Technical Specifications for the Project. Specifications may be separate or set forth on the Drawings, or both.

1.62 **Standard of Care:**

The “Standard of Care” has the meaning set forth in Section 4.01(a).

1.63 **Start Work Date:**

The “Start Work Date” shall mean the date set forth in the Notice to Proceed for the Contractor to begin Work.

1.64 **Subcontractors:**

The term “Subcontractor” means any person having a direct or indirect contract with the Contractor, at any tier, for design or engineering, or for the supply and erection of Equipment and Materials, or for the performance of a portion of the Work, in each case forming part of the Work.

1.65 **Submittals:**

“Submittals” are Shop Drawings, Product Data, Samples and other information provided by the Contractor setting forth its proposed Equipment and Materials, procedures, means or methods for how it intends to comply with the Contract Documents. Submittals are not Contract Documents.

1.66 **Substantial Completion:**

“Substantial Completion” shall have the meaning set forth in Section 6.10, and the date of Substantial Completion is the date established pursuant to Section 6.10.

1.67 **Supplier:**

A “Supplier” is a person having a direct or indirect contract with the Contractor, at any tier, only for the supply of Equipment and Materials.
1.68 **Taxes:**

The term “Taxes” means all taxes, duties, fees or other charges levied or imposed by any country, state or any political subdivision thereof, including but not limited to income, capital, sales, excise and use taxes, customs duties, stamp duties, fees or charges, levies in respect of social welfare, health, workers’ compensation, pension, unemployment or other similar insurances or programs, whether imposed by withholdings or otherwise, and except as otherwise expressly provided, whether existing at the date of this Contract or created and imposed at a later date.

1.69 **Technical Specifications:**

The “Technical Specifications” are those written specifications designated by the Port Authority as the Technical Specifications for the Project.

1.70 **Work:**

The “Work” is all obligations of the Contractor under the Contract Documents and all Equipment and Materials, labor, construction, management, supervision, services and activities of every kind and nature, whether commenced or not, or completed or partially completed, undertaken by the Contractor, provided or to be provided by the Contractor, required of the Contractor, or inferable from the Contract Documents to perform and fulfill all of the Contractor’s obligations pursuant to the Contract Documents. The Work may constitute the whole or a part of the Project.

1.71 **Working Day:**

A “Working Day” is a calendar day, excluding Saturdays, Sundays and the A. G. C. holidays for the applicable year, when Work can be performed for a period of not less than seven (7) hours between 7:00 AM and 6:00 PM. AGC holidays falling on Sunday are observed on Monday. Holidays falling on Saturday are not observed.

1.72 **Work Product:**

“Work Product” shall have the meaning set forth in Section 2.05.

END OF GENERAL CONDITIONS SECTION 1
SECTION 2. CONTRACT DOCUMENTS

2.01 Intent of Contract Documents:

(a) The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. These General Conditions, in conjunction with the other Contract Documents, all of which constitute a part of this Contract, are each intended to be cooperative; a provision occurring in one is as binding as though occurring in all, and when read together are intended to describe and provide for a finished piece of work, complete in every detail. Work not expressly set forth in the Contract Documents will be required to the extent it is consistent therewith and is inferable therefrom as being necessary to produce the intended results. Omissions from the Contract Documents or the incorrect description of details of Work which are manifestly necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve the Contractor from performing such omitted or incorrectly described details of the Work, but they shall be performed as if fully and correctly set forth and described in the Contract Documents.

(b) The organization of the Specifications into divisions, sections and articles, and the arrangement of the Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

(c) Unless otherwise stated or defined in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

2.02 Precedence of Contract Documents:

(a) If there is an irreconcilable conflict between Contract Documents, the document highest in precedence shall control, but except in such event and to avoid such conflict, every construction of provisions shall be that each is in aid to, or supplementary to or complementary of, each other provision, to control and secure for the Port of Houston Authority the completion of the entire Work in an expeditious, orderly and coordinated manner. The precedence, from highest to lowest, shall be in the following order:

1. Permits for the Work from Governmental Authorities as may be required by law;
2. Special Conditions;
3. General Conditions;
4. Specifications;
5. Drawings.

The most recently issued document takes precedence over previously issued forms of the same document. Modifications take precedence over applicable previously issued documents under items 2 through 5 above. Detailed Drawings shall take precedence over general Drawings.

(b) Should there be an irreconcilable conflict of terms within the Drawings or within the Specifications, the Contractor shall be obligated to provide the most expensive combination of quality and quantity of Work indicated. The Port Contract Representative will clarify the Project requirements in the event of an above mentioned conflict that affects the Contractor. In general,
1. figures take precedence over scale measurements;
2. large scale details take precedence over smaller scale details;
3. architectural Drawings take precedence in regard to dimensions, when in conflict with mechanical and structural Drawings, except for the size of the structural members;
4. specifically titled Drawings and sections of the Specifications take precedence over indication of the item in a collateral way;
5. existing conditions take precedence over Drawings and Specifications for dimensions.

2.03 References:

(a) Unless expressly stated otherwise in the Contract Documents, references to codes, standards, pamphlets, specifications and recommendations of trade associations, technical societies, or of manufacturers, refer to the latest edition of each which is effective on the date of the Invitation to Proposers. Manufacturers' specifications and recommendations shall be construed to mean those printed on container labels or in published manuals, catalogues, or instruction sheets.

(b) The codes, standards, pamphlets, specifications and recommendations of trade associations, technical societies, or of manufacturers shall not apply to the extent:

1. that they provide requirements less stringent than those set forth in the Contract Documents, the requirements of which apply as minimums only. For the avoidance of doubt, such codes, standards, pamphlets, specifications and recommendations do not supersede more stringent requirements set forth in the Contract Documents;

2. that they include exclusions, limitations or waivers that are inconsistent with the Contract Documents.

2.04 Special Conditions:

If any construction, work or condition which is not covered by these General Conditions be anticipated by the Port of Houston Authority on any proposed Work, Special Conditions for such Work will be attached to and shall be a part of the Contract.

2.05 Ownership and Use of Drawings, Specifications and Work Product:

All Drawings, Specifications, other documents, including those in electronic form, and the architectural works (as defined by 17 U.S.C. Section 101) embodied thereby, prepared in connection with the Project by the Port of Houston Authority, Design Consultant, Contractor, Subcontractor, any consultant, Supplier, or other contractor and copies thereof furnished by any of them are and shall remain the Port of Houston Authority's property upon creation, and the Port of Houston Authority shall hold all common law, statutory and other rights in them, including all copyright rights (collectively “Work Product”); provided, however, that Work Product shall not include (a) administrative information developed by the Contractor, its Subcontractors, consultants, Suppliers, or other contractors in the ordinary course of business (e.g., accounting records, internal memorandums and the like), (b) means or methods of Contractor, its Subcontractors, consultants, Suppliers, or other contractors which relate to its general services and which are not specifically related to the Project or the services provided under this Contract, or (c) pre-existing proprietary information of the Contractor, its Subcontractors, consultants, Suppliers, or other contractors (the foregoing (b) and (c) collectively being “Contractor Proprietary Information”). To this end, Contractor agrees and does hereby assign, grant, transfer and convey to the Port of Houston Authority, its successors
and assigns, Contractor’s entire right, title, interest and ownership in and to such Work Product, including, without limitation, all rights relating to copyright arising under 17 U.S.C. Section 101 et. seq. and any and all successors and assigns shall own Contractor’s right, title and interest in and to, including the right to use, reproduce, make derivative works, distribute by sale, rental, lease or lending or by other transfer of ownership, to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a “work made for hire” as defined in 17 U.S.C. Section 201(b). In addition, the Contractor hereby grants the Port of Houston Authority a fully paid-up, royalty free, perpetual, assignable, non-exclusive license to use, copy, modify, create derivative works from, and distribute to third parties Contractor Proprietary Information in connection with the exercise of the Port of Houston Authority’s rights in the Work Product and in the operation, maintenance, repair, renovation, expansion, replacement and modification of the facilities and other Work which are the subject matter of the Project (whether by the Port of Houston Authority or a third party). Contractor shall use diligent efforts to obtain similar assignments, confirmations and licenses from all of its Subcontractors, and Suppliers, and Contractor shall promptly inform the Port of Houston Authority of any inability to obtain the assignments, confirmations and licenses required by this Section. The Work Product is to be used only by the Contractor, its Subcontractors, and Suppliers, and is not to be used on any other project. The Contractor, Subcontractors, and Equipment and Material Suppliers are granted a limited license to use and reproduce applicable portions of the Work Product prepared by the Port of Houston Authority and any Design Consultant appropriate to and for use in the execution of their Work under the Contract Documents. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Port of Houston Authority’s copyright or other reserved right. Contractor shall deliver all copies of the Work Product to Port of Houston Authority upon the earlier to occur of the Port of Houston Authority’s request, completion of the Work, or termination of the Contract.

The Port of Houston Authority may provide the Contractor with pre-existing drawings, documents, designs, and other information which the Contractor may use in connection with performance of the Work under this Contract. The Contractor confirms and agrees that the Port of Houston Authority has and shall retain all rights, title, and interest in and to such drawings, documents, designs and information, including, without limitation, any copyright or other Intellectual Property Rights, and that by use of such drawings, documents, designs and information, the Contractor shall not acquire any right, title, or interest in such drawings, documents, designs and information, including, without limitation, any copyright or other Intellectual Property Rights.

2.06 **Examination of Drawings, Specifications, Special Conditions and Site of Work:**

(a) In entering into the Contract, the Contractor represents and warrants that it has and shall be deemed to have carefully examined and inspected the Site and its surroundings and satisfied itself as to the condition of all circumstances affecting the Site and the Work, including without limitation the location and nature of the Work, nature of the geotechnical conditions, ground and subsoil, the form and nature of the Site, the subsurface conditions of the Site (both manmade and natural), the local conditions under which the Work is to be performed, the location and character of existing or adjacent work or structures, the Contract Documents, the extent and nature of the Work, Equipment and Materials necessary for carrying out and completing the Work, the buyout and availability and cost of Equipment and Materials, the general character and accessibility of the Site, Applicable Law (including without limitation labor laws), labor supplies and costs, any accommodations the Contractor may require, other general and local conditions which might affect the Work or performance of the Work, and in general all risks and contingencies influencing or affecting the Work, and correlated its observations with the requirements of the Contract Documents, and, subject to the right set forth below to rely upon specified Port of Houston Authority supplied information, that the Contractor has assumed the risk of such conditions and will, regardless of such conditions, the expense, or difficulty of performing the Work, fully complete the Work for the stated Contract Price and within the Contract Time without further recourse to the Port of Houston Authority.

The Contractor fully accepts any lack of completeness of and errors in the Contract Documents, including the Drawings and Specifications, and verifies that such documents were sufficiently detailed,
accurate and comprehensive to enable Contractor to have reliably estimated and established the Contract Price and to perform the Work within the Contract Time.

The representations, warranties and acceptances set forth in the foregoing two paragraphs of this Section 2.06 shall be renewed and apply to all Work, conditions, circumstances, and Contract Documents associated with any Modifications.

The Contractor shall not be entitled to any extensions of the Contract Time or to any adjustment of the Contract Price on grounds that it misinterpreted or misunderstood any matter assumed by the Contractor pursuant to this Section 2.06, nor shall it be released from any of the risks accepted or obligations undertaken by it under the Contract Documents, or on the grounds that it did not or could not reasonably have foreseen any matter which affects the execution of the Work.

(b) The Port of Houston Authority makes no representation or warranty, and hereby disclaims any such warranty, that any information provided to the Contractor by or on behalf of the Port of Houston Authority in connection with the Work is accurate, correct, sufficient, complete, fit for its intended purpose or can be used without infringing any Intellectual Property Rights of third parties under any intellectual property rights of the world.

(c) Notwithstanding the foregoing, in instances in which the Port of Houston Authority has supplied the Contractor with geotechnical reports or in which the Special Conditions specify that the Contractor is entitled to rely upon other information provided by the Port of Houston Authority, the Contractor

1. shall not be required to perform any investigation of the conditions described in such geotechnical reports or other information, other than its observation of the Site and review of such technical reports and information, and
2. is entitled to rely upon such information in submitting its Bid/Proposal and performing the Work,

in each instance except to the extent that the Contractor knows or should know in the exercise of its Standard of Care that such information is inadequate, insufficient or incorrect.

2.07 Bid/Proposal Quantities:

The quantities shown on the Bid/Proposal Request are estimates and are for comparison of bids/proposals only, and while such quantities are believed to be reasonably accurate, the Port of Houston Authority does not guarantee their accuracy.

The Contractor must make its own take-off and base its price or prices on the results thereof. No Change Order shall be issued and Contractor shall not be entitled to any Change on account of any excess or deficiency with respect to such information whether absolute or relative in relation to quantities stated in the Bid/Proposal Request. Contractor acknowledges and agrees that any such excess or deficiency shall not be the basis for a Claim, that Contractor will not assert or pursue and has no right to assert or pursue a Claim on the basis of any such excess or deficiency, and any such excess or deficiency shall not entitle Contractor to any relief or recovery, whether for additional compensation, additional time, damages or otherwise. The foregoing is not intended to preclude Change Orders to adjust an estimated contract price in instances in which the Contract Price (as opposed to set unit costs) is not fixed or guaranteed not to exceed a specified amount, but, rather is established at Final Completion of the Work on the basis of actual quantities of Work.

Without limiting the foregoing and subject to Section 2.06 above, any information given in regard to soil data, subsurface data, test borings and similar conditions is to be considered approximate.
2.08 Interpretation of Contract Documents:

(a) The Port of Houston Authority and Contractor recognize the possibility that errors, omissions and discrepancies exist in the Contract Documents. The Contractor shall not take advantage of any error or omission in the Contract Documents. At all times, the Contractor shall retain the duty to detect or discover any errors and omissions and make appropriate requests in respect thereof. Before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relating to that portion of the Work, as well as the information furnished by the Port of Houston Authority, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the Site affecting such Work. Any errors, omissions or inconsistencies discovered by the Contractor shall be reported promptly to the Port of Houston Authority as an RFI in such form as the Port of Houston Authority may require.

Instructions will be given by the Port Contract Representative to the Contractor when such error or omission is discovered by the Port Construction Representative or when reasonably requested of the Port Construction Representative by the Contractor. Any such problem in the Contract Documents not brought to the attention of the Port Contract Representative prior to Contractor’s submission of its Bid/Proposal will be resolved by the Port Contract Representative in a manner solely within the discretion of the Port Contract Representative. Contractor acknowledges and agrees that any such resolution shall not be the basis for a Claim, that Contractor will not assert or pursue and has no right to assert or pursue any Claim on the basis of any such resolution, and any such resolution shall not entitle Contractor to any relief or recovery, whether for additional compensation, additional time, damages or otherwise. In addition, if the Contractor performs any Work when it knew or should have known it involves an error, inconsistency or omission in the Contract Documents without submitting such request to the Port of Houston Authority and receiving a written order or consent to proceed, the Contractor shall assume full responsibility for such Work and shall be responsible for any and all costs to the Port of Houston Authority attributable to such performance, including without limitation all costs associated with design professionals or other consultants and costs of correction of the Work, and liable for all damages caused thereby.

(b) If the Contractor observes that any Contract Document fails in any respect to conform with Applicable Laws, Contractor shall immediately notify the Port of Houston Authority by written RFI and identify any such failures before proceeding with any part of the Work affected thereby. In the event a Design Consultant is utilized for the Project, the Contractor shall send such RFI to the Port Construction Representative, with a copy of the transmittal letter to the Inspector and Design Consultant. If the Contractor fails to notify the Port of Houston Authority as required in the preceding sentence, the Contractor shall be liable for any damages, costs, fines or liability resulting therefrom, including, without limitation, any fines, design professional fees, consulting fees, and costs of correction of the Work.

If the Contractor performs Work when the Contractor knows or should know it to be contrary to Applicable Laws without such notice to the Port of Houston Authority and appropriate instruction, the Contractor shall assume full responsibility for such Work and shall bear all costs attributable to correction and be liable for any and all damages, fines, costs and fees caused thereby, including, without limitation, design professional fees and consulting fees.

(c) In the execution of the Work, the Drawings shall be accurately followed to scale giving preference in all cases to figured dimensions over scale measurements and to details over general Drawings. Where any discrepancy occurs between figured dimensions and scale or between details and general Drawings, the Contractor shall provide notice of such discrepancy in an RFI, which RFI shall set forth the facts constituting such discrepancy in a degree of detail acceptable to the Port of Houston Authority, to the Inspector who shall provide explanation and instructions as to which is to govern before the Contractor proceeds with the Work at issue. In the event there is a Design Consultant for the Project, the Contractor shall send the RFI to the Port Construction Representative, with a copy of the transmittal
letter to the Inspector and the Design Consultant. Departure from the Contract Documents in the execution of the Work without the Port Contract Representative’s prior written order or consent will be at the Contractor’s sole risk and expense and the Contractor shall assume full responsibility for such Work and shall be responsible for any and all damages, costs or liability resulting therefrom, including, without limitation, any and all fines, design professional fees, consulting fees, increased costs of performance of the Work, and costs of correction of the Work.

(d) The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Port of Houston Authority or the work installed by other contractors, is not guaranteed by the Port of Houston Authority. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, conditions and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the Site all dimensions relating to such existing or other work. Any errors due to the Contractor’s failure to so verify all such grades, elevations, locations, conditions or dimensions shall be promptly rectified by the Contractor without any additional cost to the Port of Houston Authority.

(e) The Contractor shall at once report in writing to the Port of Houston Authority any materials, systems, procedures or methods of construction, either shown on the Drawings or specified, which it considers to be incorrect, inadequate, obsolete, unsuitable for the purpose intended, or which would not satisfy the Standard of Care or warranties required by the Contract Documents. If Contractor proceeds with such Work without reporting such concerns and instruction to proceed from Port of Houston Authority, the Contractor shall assume full responsibility for such Work and shall be responsible for any and all damages, costs or liability resulting therefrom, including, without limitation, any and all fines, design professional fees, consulting fees, increased costs of performance of the Work, and costs of correction of the Work.

(f) When more than one material, brand or process is specified for a particular item of Work, the choice shall be the Contractor’s. The final selection of color and pattern shall be made from the range available within the choice selected by the Contractor, unless the item is specified to match a specific color or sample furnished. Where Equipment and Materials are specified by brand name, trade name, or manufacturer, only products of those named manufacturers are acceptable unless equal Equipment and Materials of other manufacturers are accepted in writing by the Port Contract Representative before submittal of Bids/Proposals or the Port Contract Representative accepts a substitution in compliance with Section 4.10. The Contractor shall not be allowed to supply equal or alternative Equipment and Materials not so accepted. The judgment of the equality of Equipment and Materials or products rests solely with the Port Contract Representative, and its decision shall be final. Specified architectural, construction or equipment details may not be regularly included as part of the named manufacturer’s standard items or Equipment and Materials, but shall be provided by the manufacturer as required for the Project or the proper functioning of the Equipment and Materials. Indicated and specified performance and Equipment and Materials requirements are minimum, and are required in addition to standard performance and accessories provided by the manufacturer.

(g) If the Contractor believes that additional cost or time is involved or that it is entitled to a Change, recovery of any damages or other relief because of clarifications or instructions issued by the Port of Houston Authority in response to the Contractor’s notices or requests for information pursuant to this Section 2.08, the Contractor shall make Claims as provided in Section 8; provided, however, that no adjustment in the Contract Time or Contract Price, recovery of damages or other relief shall be granted if the adjustment would be prohibited pursuant to this Section 2.08.

2.09 **Performance & Payment Bonds:**

Unless otherwise provided in the Special Conditions, each Contract at its inception shall be covered by a performance bond and a payment bond, each for 100% of the Contract. Bonds must be furnished with the executed Contract. Such bonds must be furnished on the Port of Houston Authority forms. No other
forms are acceptable. Such bonds must remain in full force for one year after final acceptance of the Finally Completed Work and cover all obligations of the Contractor during such one year period, specifically including all repair and warranty obligations of the Contractor. Performance and payment bonds must meet all criteria of Texas law and both must be executed by the same corporate surety which shall be (i) duly authorized and admitted to do business in the State of Texas, (ii) licensed by the State of Texas to issue surety bonds and (iii) listed in the current issue of the Federal Register Department of the Treasury list. Moreover, such surety must show adequate bonding capacity for the size of the proposed Project. The Port of Houston Authority will not accept bonds from surplus lines or Texas Lloyds Plan insurance companies. The Port of Houston Authority shall be the sole judge of the validity and adequacy of any bonds submitted.

2.10 **Port Authority Financial Services Department Approval:**

No Contract shall become effective or binding upon the Port of Houston Authority until the appropriate financial officer for the Port of Houston Authority certifies that funds are or will be available to meet the Contract pay requirements when due.

2.11 **Port of Houston Authority Purchase Order:**

The Purchasing Manager shall prepare a Purchase Order on the form prescribed by the Port of Houston Authority and mail or otherwise deliver the same along with one fully executed copy of all other Contract Documents to the Contractor. The date of the Purchase Order is the date of the Contract. The Contractor is not authorized to begin Work under the Contract Documents until after the Port of Houston Authority has issued a fully executed Purchase Order and the Port Construction Representative has issued a Notice to Proceed pursuant to Section 6.01; the Contractor shall not start Work before the Start Work Date and shall not begin field work until the time established pursuant to Section 6.02. If Contractor begins work prior to issuance of a fully executed Purchase Order and receipt of a Notice to Proceed, it does so at its own risk and agrees to assume all responsibility therefor, to bear all costs attributable thereto, including without limitation all costs associated with design professionals, and to be liable for all damages caused thereby.

**END OF GENERAL CONDITIONS SECTION 2**
SECTION 3. REGULATORY, ENVIRONMENTAL, AND SAFETY REQUIREMENTS

3.01 Laws to be Observed:

The Contractor is deemed to have made itself familiar with and at all times shall observe and comply with and give all notices required by all Applicable Laws, and shall, in accordance with Sections 11.08 and 11.09, INDEMNIFY AND SAVE HARMLESS THE PORT OF HOUSTON AUTHORITY INDEMNITEES AGAINST ANY CLAIM, DEMAND, SUIT, CAUSE OF ACTION, LIABILITY, COST, EXPENSE, FINE, SETTLEMENT OR JUDGMENT ARISING FROM THE VIOLATION OF, OR FAILURE BY CONTRACTOR, ITS SUBCONTRACTORS, SUPPLIERS OR ANY OF ITS OR THEIR EMPLOYEES, AGENTS OR REPRESENTATIVES, TO COMPLY WITH ANY SUCH APPLICABLE LAWS.

3.02 Building Codes and Applicable Laws:

Where the requirements of the local building code or other Applicable Laws conflict with the Contract Documents and such requirements are mandatory or more restrictive, such requirements shall be followed to the same extent as if specifically set out herein in full.

Provisions of the Contract Documents which are more stringent than the minimum requirements of such codes, regulations or Applicable Laws shall be followed, and no requirements of the Contract Documents may be modified or voided because any such requirements are not specifically required by such codes, regulations or Applicable Laws.

3.03 Permits and Licenses:

The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the prosecution of the Work, including, but not limited to, the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. This requirement shall not pertain to permits required by the United States Army Corps of Engineers, which permits will be obtained by the Port of Houston Authority.

The Contractor shall obtain approvals of Government Authorities and shall procure, obtain and pay all charges for all permits and approvals prior to impeding or closing streets, removing parking meters and other similar matters as may be necessary or appropriate from time to time for the performance of the Work, and shall notify the Port Contract Representative at least 48 hours prior to closing a road or a road crossing.

If the Contractor fails to give such notices, pay such charges, or obtain such permits and licenses, the Contractor shall be liable for and SHALL INDEMNIFY, PROTECT AND HOLD HARMLESS THE PORT OF HOUSTON AUTHORITY INDEMNITEES AGAINST THE RESULTING FINES, PENALTIES, JUDGMENTS AND DAMAGES, INCLUDING REASONABLE ATTORNEYS’ FEES, IMPOSED ON, OR INCURRED BY, THE PARTIES SO INDEMNIFIED.

3.04 Permit for Welding and Cutting:

A “hot work” permit must be obtained from the Port of Houston Authority’s Marine and Fire Department prior to commencement of any welding or cutting on Port of Houston Authority property or on a barge, platform, or other floating facility. Prior to commencement of such “hot work”, the Contractor shall also contact other applicable local fire departments to determine the need for any other permits which may be required by such departments. Once the “hot work” permit is executed and issued to the Contractor by the Port of Houston Authority’s Marine and Fire Department, the Contractor must notify such department by telephone at (713) 670-2636 each day before a day during which such activity is scheduled to take place.
3.05 Safety:

(a) The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. The Contractor shall take precautions for safety of, and shall provide protection to prevent damage, injury or loss to:

(i) employees involved in the Work and other persons on Site or otherwise who may be affected thereby;
(ii) the Work and Equipment and Materials to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the Contractor or the Contractor’s Subcontractors of any tier; and
(iii) other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The Contractor shall be solely responsible for furnishing, erecting and maintaining suitable barricades, warning signs, flares, barriers, cones, lights, flags, signals, flagmen and any and all other safety devices which are or may become necessary to adequately protect the Work, Contractor’s workers and all other parties coming onto the Site. The Contractor shall also be responsible, at the Contractor’s sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor with prior approval of the Port of Houston Authority.

Upon Final Completion of the Work, all such safety devices and evidence thereof shall be immediately removed.

3.06 Site Health and Safety Coordinator:

The Contractor shall designate a qualified Site Health and Safety Coordinator (the "SHSC") to ensure that all Applicable Laws pertaining to health and safety are complied with and all health and safety requirements are implemented. The SHSC shall have the authority to terminate any activity when any such activity or condition affecting such activity, the Work or the Project is found to be unsafe. The name and qualifications of the SHSC shall be furnished to the Port Construction Representative for review prior to commencement of Work.

3.07 Health and Safety Plan:

The Contractor shall submit five (5) copies of a health and safety plan for the Work to the Port Construction Representative for review at least forty-eight (48) hours prior to commencing performance of any activity at the Site. Prior to beginning any field work at the Site, such plan shall be certified, by signature of the SHSC, that it complies with applicable portions of Occupational Safety and Health Administration (OSHA) standards 29 CFR 1910 and 29 CFR 1926. Such plan shall provide, at a minimum, for safe working practices, medical surveillance, engineering safeguards, personnel protective equipment, training, safe operating procedures, emergency planning, reporting and sanitation. Notwithstanding the Port Construction Representative’s review and acceptance of the health and safety plan, the Contractor, and not the Port of Houston Authority, shall be responsible for and have control over ensuring the safety of its personnel and its Subcontractors, agents, representatives and any other person who visits the Site.
3.08 **Safety and Environmental Record:**

Pursuant to Texas Water Code Section 60.4115, the Port of Houston Authority will require the Contractor to supply information regarding the safety and environmental record of Contractor. Contractor should be aware that its failure to comply with the requirements of Texas Water Code Section 60.4115 may result in termination of the Contract.

3.09 **Environmental Management System:**

The Port of Houston Authority has developed an Environmental Management System (EMS) based on the ISO 14001 standard. As part of the EMS, the Port of Houston Authority has adopted an environmental compliance policy with commitments to pollution prevention, environmental compliance, continual improvements, and environmental stewardship. The Contractor shall adhere to such policy and programs, as applicable, and provide information to the Port of Houston Authority in the form and at the times requested by the Port of Houston Authority in furtherance of such policy and programs.

3.10 **Environmental Training Documentation:**

The Contractor shall submit documentation of environmental training applicable to the Work upon request by the Port of Houston Authority.

3.11 **Spill Prevention Plan:**

Contractor shall provide a Site/Project specific Spill Prevention Plan or Spill Prevention Control and Countermeasure Plan (as applicable) for review and acceptance pursuant to the provisions of Section 4.10. A Spill Prevention Plan, for projects with less than 1320 gallons of oil, as defined by 40 CFR part 112.2, shall meet at a minimum the requirements set forth in Section 3.11(a) below. A Spill Prevention Control and Countermeasure Plan, for projects with 1320 gallons of oil or greater, as defined 40 CFR part 112.2, shall meet at a minimum the requirements listed in Section 3.11(b) below.

a. **Projects with less than 1320 gallons of oil on Site:**

Contractor shall complete a Spill Prevention Plan accepted by the Port of Houston Authority for projects with less than 1320 gallons of oil on Site. The Contractor shall not commence any field work prior to acceptance of such plan by the Port Construction Representative. The Spill Prevention Plan shall include at a minimum:

1. A brief project description, which should include, at a minimum: Facility name, Location, Size of Work Area, Work Scope or Activity Description.

2. A brief description of best management practices to avoid spills, including containment methods, spill proof cans, labels, etc.

3. A brief description of spill, material on hand, for example gloves, respirator, tyvek suit, equipment, absorbent.

4. A list or brief description of Spill/Incident/Release Reporting and Response Procedures, Including:
a. FIRST RESPONSE – CALL PORT OF HOUSTON AUTHORITY POLICE 713-670-3611
b. Field Supervisor 24-hour phone numbers
c. Other company personnel 24-hour phone numbers
d. Local, state, and federal emergency response phone numbers
e. Emergency Response Contractor phone numbers that has been notified by company regarding project.

(5) A listing of all hazardous or potentially hazardous materials/chemicals that may be used on-Site during the project (including fuel, oil, fluids, solvents, etc.) and a copy of the Material Safety Data Sheet for each such material.

b. **Projects with 1320 gallons or greater of oil on Site:**

Contractor shall complete a Spill Prevention Control and Countermeasure Plan accepted by the Port of Houston Authority for projects that will have 1320 gallons or more of oil on Site. The Spill Prevention Control and Countermeasure Plan (SPCC) must meet the requirements of Code of Federal Regulations (CFR) published by the office of the Federal Register National Archives and Records Administration, 40 CFR 112.3 – 112.7. The SPCC shall be specially designed for the Contractor’s planned work methods and procedures. The SPCC shall be designed to complement all applicable safety standards, fire prevention regulations and pollution prevention policies and procedures. The SPCC shall include estimates of the quantity and rate of flow should equipment fail, and detail containment and/or diversionary structures to prevent spills from leaving the Site or migrating into the Houston Ship Channel or other navigable waters. The SPCC shall include methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the Port of Houston Authority Police. The Contractor shall not commence any field work prior to acceptance of such plan by the Port Construction Representative.

c. **Reporting:**

1. The Contractor shall immediately report any spill or release to the Port of Houston Authority’s Police Department at telephone number (713) 670-3611 and to the Inspector, whether or not such spill or release is associated with this Contract. Thereafter, within two (2) Working Days after the occurrence of such event, Contractor shall submit a written report describing such event in a degree of detail reasonably acceptable to the Port Construction Representative and

2. If a spill migrates into the Houston Ship Channel or other navigable waters, in addition to the requirements of the foregoing Section 3.11(C)(1), the Contractor shall contact the U. S. Coast Guard Response Supervisor at telephone number (713) 671-5121, to review procedures and the Spill Prevention Plan or SPCC and coordinate activities and schedules, prior to commencement of cleaning activities.

d. **Implementation:**

The Contractor shall immediately respond in accordance with the Spill Prevention Plan or SPCC Plan in the event of a spill.
e. **Disposal:**

The Contractor shall dispose of spilled materials in accordance with EPA and TCEQ regulations and any other Applicable Laws. In connection with such disposals, the Contractor shall use only those transporters and disposal facilities that are accepted in advance in writing by the Port of Houston Authority. All cost of collection, containment and disposal of spilled materials shall be the responsibility of the Contractor.

3.12 **Accident Reporting and Emergencies:**

The Contractor shall immediately report to the Port of Houston Authority’s Police Department at telephone number (713) 670-3611 and the Inspector of the Port of Houston Authority any jobsite accident, injury, illness, or environmental Release. The Contractor shall submit to the Inspector of the Port of Houston Authority as soon as possible but no later than two (2) Working Days thereafter, a full written report giving the date, time, location, description (in a degree of detail acceptable to the Port Contract Representative), and personnel involved. Such report shall be signed by Contractor’s designated SHSC.

In an emergency affecting safety of persons or property, the Contractor shall immediately notify the Port of Houston Authority’s Police Department at telephone number (713) 670-3611 and the Inspector of the Port of Houston Authority and undertake such acts as are necessary, at the Contractor’s discretion, to prevent threatened damage, injury or loss. Any Claim by the Contractor for additional compensation, an extension of time, other relief or damages on account of an emergency shall be made and determined in accordance with Section 8.

3.13 **Discovery of Hazardous Substances:**

In the event the Contractor encounters on the Site materials reasonably believed to be Hazardous Substances that have not been rendered harmless, the Contractor shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Port Contract Representative, the Port of Houston Authority Police, and the Inspector. Work in the area affected shall not thereafter be resumed except by written order of the Port Contract Representative unless and until the material is determined not to be Hazardous Substances or such Hazardous Substances are rendered harmless.

The Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation and disposal of any Hazardous Substances in or on the Site brought to the Site by the Contractor or any Subcontractor or Supplier (other than any Hazardous Substances that are required by the Contract Documents to be used in connection with the Work). Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of such Hazardous Substances and shall, prior to undertaking any such abatement, cleanup, control, removal, remediation and disposal, notify the Port of Houston Authority Police, and the Port Contract Representative such that they may observe such activities; provided that it shall be Contractor’s sole responsibility to comply with Applicable Law governing any such activities.

3.14 **Characterization and Disposal of Excavated Materials and Certain Other Waste:**

(a) Prior to removing materials requiring disposal off-site, the Contractor shall stockpile such materials. The Port of Houston Authority shall characterize such stockpiled materials prior to removal of such materials from the Site. The Port of Houston Authority shall perform all the necessary analytical testing and/or waste determinations for all excess excavated earthen, trash and construction debris materials. The determination by the Port of Houston Authority as to the characterization of such materials shall be final and conclusive.
(b) The Contractor shall submit to the Port Construction Representative the names of all Subcontractors transporting excess excavated earthen, trash and construction debris materials, locations of all disposal sites where such materials will be disposed of, and copies of any permits required for such Subcontractors to so transport and dispose of such materials at least twenty (20) working days in advance of the proposed schedule to move them. Such Subcontractors must be approved by the Port of Houston Authority prior to the removal of any such material from the Site. All such material must be disposed of at the approved location(s) and the Contractor shall provide documentation to the Port of Houston Authority evidencing to the satisfaction of the Port of Houston Authority the final disposition of all such materials, including without limitation written documentation from the receiving facility acknowledging receipt of the analytical report(s) for such materials, and its acceptance of such materials at that location.

(c) In the event the Contractor intends to reuse excavated and excess materials, rather than dispose of them as provided above, the Contractor shall additionally submit proposed reuse locations and its proposed new uses for such materials to the Port Construction Representative at least twenty (20) working days in advance of the proposed schedule to move them. The Port of Houston Authority reserves the right to accept or reject any reuse of excavated and excess materials removed from Port of Houston Authority properties by the Contractor, and limit such reuse to future use at industrial sites only, and not in any residential or other sensitive area. The Port of Houston Authority reserves the right to determine whether a site location is sensitive.

3.15 Cultural Resources:

The Contractor shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. If any such items are discovered on the premises, the Contractor shall immediately notify the Port Construction Representative of the Port of Houston Authority of such discovery, and the Site and the items discovered shall be protected by the Contractor from further disturbance until a professional examination of them can be made or until clearance to proceed is authorized by the Port Contract Representative.

3.16 Sanitary Facilities:

Unless stated otherwise in the Special Conditions, the Contractor shall provide sanitary facilities for use of the workmen, and shall maintain such facilities in a clean and sanitary condition until the expiration or termination of the Contract, at which time they shall be immediately removed.

3.17 Use of Site:

The Contractor shall confine operations at the Site to areas permitted by Applicable Laws and the Contract Documents and shall not unreasonably encumber the Site with Equipment and Materials or other items. The Contractor shall avoid disturbing the Site beyond that which is necessary to effect construction or to create designated lay-down areas.

The Contractor shall use the designated work areas for the temporary storage of construction Materials, Equipment, and debris. Additional Contractor work areas must be approved through the submittal process. Only Equipment and Materials which are to be used directly in the Work shall be brought to and stored on the Site by the Contractor. After Equipment and Materials is no longer required for the Work, it shall be promptly removed from the Site. Protection of Equipment and Materials stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor.
Equipment and Materials shall, to the satisfaction of the Port Construction Representative, be neatly, safely and compactly piled or stacked so as to minimize hazard, interference, inconvenience and damage to property owners, users of Port of Houston Authority property or facilities, Port of Houston Authority employees and the general public. Such stacks or piles shall be no closer than three feet from any fire hydrant and shall not block or interfere with public and private accessways, drives and streets.

Shade trees, improvements and other structures shall be protected from any damage by personnel, activities, Equipment and Materials, machinery, stone, earth or other items. Altering the condition of properties adjacent to, along or outside of rights-of-way will not be permitted. Means, methods, techniques, sequences, or procedures, which will result in damage to such properties or improvements will not be permitted. Injuries and damage to any of the foregoing, including accessways, drives, streets, improvements or other property, shall be repaired or replaced by the Contractor to the satisfaction of the Port Contract Representative at the Contractor’s sole expense.

The Contractor shall avoid obstructing drainage ditches or inlets; when obstruction is unavoidable due to requirements of the Work, the Contractor shall provide grading and temporary drainage structures to maintain unimpeded flow. The Contractor shall provide mats or other means to prevent overloading or damage to existing roadways from tracked equipment or large or heavy trucks or equipment. The Contractor shall provide temporary crossing or complete the excavation and backfill in one continuous operation to minimize the duration of obstruction when excavation is required across drives or entrances.

The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Site and all adjacent areas. The Contractor shall avoid obstructing driveways or entrances to private property and shall maintain access for emergency vehicles, including access to fire hydrants, at all times during the prosecution of the Work. The Work shall be performed, to the fullest extent reasonably possible, in such manner that public areas adjacent to the Site shall be free from all debris and Equipment and Materials. The Contractor shall not leave public roadways or other construction areas unclean overnight. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the Site, or (2) the buildings which are constructed as part of the Project in the event of partial occupancy.

Vehicles and construction equipment shall not be washed at locations where the runoff will flow directly into a watercourse, storm water conveyance system or into another contractor’s site. Special areas shall be designated for washing vehicles. These areas shall be located where the wash water will spread out and evaporate, or where the runoff can be collected in a temporary holding or settling basin. Wash areas must have gravel or rock bases to minimize mud generation.

3.18 Misplaced Materials

The Contractor shall prevent any material or other matter from falling into or being placed in the Houston Ship Channel or other navigable waters. Any such material or matter which, in the opinion of the Port Construction Representative, may be dangerous to or obstruct navigation or future dredging, shall be removed immediately. The Contractor shall give immediate notice to the Port Construction Representative of such potential danger or obstruction, and when ordered to by the Port Construction Representative, the Contractor shall mark or buoy such obstructions until they are removed. If the Contractor refuses, neglects or unduly delays compliance with this Section 3.18, such obstruction or potential danger may be removed or otherwise dealt with by the Port of Houston Authority. The Port of Houston has the right to offset all costs incurred in connection with such removal or other effort by the Port of Houston, including without limitation all costs associated with design professionals, against any amounts due the Contractor. Furthermore, if Contractor is not at that time owed any amounts by the Port of Houston Authority and Contractor fails or
refuses to pay such costs, such costs may be recovered from the Contractor’s surety under the Contractor’s performance bond.

3.19 Fill Material Policy:

(a) The Port of Houston Authority has adopted a policy regarding the acceptance of fill material to be incorporated into the Port of Houston Authority’s construction Projects. Material governed by this policy shall include soil, sand for cement stabilized sand and concrete, road base materials, sub-ballast for railroad construction, and any other materials brought onto Port of Houston Authority property for construction purposes. It is the intent of this policy to ensure that only clean, uncontaminated materials as accepted by the Port of Houston Authority will be placed on Port of Houston Authority property and any materials placed on Port of Houston Authority property shall be subject to removal by the Contractor at its sole expense if found not to be in compliance with the requirements outlined herein. Testing to determine the suitability of materials to be used on Port of Houston Authority property shall be performed by a testing laboratory employed by and paid by the Port of Houston Authority. The following tests shall be performed:

1. **Total Metals:**

   Total metals by volume shall not exceed Texas Commission on Environmental Quality (TCEQ) standards for the following metals as measured by Environmental Protection Agency (EPA) Test Method 6010/7000 series.

<table>
<thead>
<tr>
<th>METAL</th>
<th>MEDIAN BACKGROUND CONCENTRATION (mg/kg)</th>
<th>METAL</th>
<th>MEDIAN BACKGROUND CONCENTRATION (mg/kg)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antimony</td>
<td>1.0</td>
<td>Lead</td>
<td>15</td>
</tr>
<tr>
<td>Arsenic</td>
<td>5.9</td>
<td>Mercury</td>
<td>0.04</td>
</tr>
<tr>
<td>Barium</td>
<td>300</td>
<td>Nickel</td>
<td>10</td>
</tr>
<tr>
<td>Beryllium</td>
<td>1.5</td>
<td>Selenium</td>
<td>0.3</td>
</tr>
<tr>
<td>Cadmium</td>
<td>52*</td>
<td>Silver</td>
<td>96*</td>
</tr>
<tr>
<td>Chromium</td>
<td>30*</td>
<td>Thallium</td>
<td>0.7</td>
</tr>
<tr>
<td>Copper</td>
<td>15</td>
<td>Zinc</td>
<td>30</td>
</tr>
</tbody>
</table>

   *0.5-acre Residential PCL, Total Soil Combined

2. **Total Petroleum Hydrocarbons (TPH):**

   TPH shall not exceed the Tier 1 Residential Standards defined on any of the reported fractions as determined by Texas Test Method 1005.

(b) **Non-Hazardous Recyclable (Reusable) Materials from Port of Houston Authority Properties:**
1. The excavation of soils containing chemicals above background concentration during construction activities (e.g., installation, repair, removal of telephone lines or other utilities, but not closures, remediations, or PST tank removal actions) and the subsequent replacement of those soils into the same excavation are not considered relocation under the definition in 30 TAC 350.36.

2. The excavation during construction activities and removal from Port of Houston Authority properties of soils containing chemicals above background concentration may be considered applicable for recycling if they are listed as Non-Hazardous Recyclable Materials (NRMs) under 30 TAC 330 and 335. The NRMs must be collected and processed to ensure they do not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products that are applied to the land.

Routine candidate materials as NRMs include, but are not limited to concrete asphalt, hydrocarbon impacted soils (class I and II), base materials, sandblast media, slags, lime materials, brick and stormwater sludges, etc.

Upon Contractor’s written request, the Port of Houston Authority shall provide Contractor with analytical results from representative samples obtained for routine materials, as maintained by the Port of Houston Authority.

Samples analyses of routine materials may be performed as indicated in the table below. In the event PCB’s, NORM, Halogens (Chlorinated Compounds) or a Hazardous Waste is suspected, additional analysis may be required. A profile may be completed by the Port of Houston Authority for materials that are intended for transportation off-Site for disposal or recycling as provided in Section 3.14. Frequency of sampling and profiling may be determined by the Port of Houston Authority.

<table>
<thead>
<tr>
<th>Analyses</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sandblast Materials</strong></td>
<td></td>
</tr>
<tr>
<td>Total Petroleum Hydrocarbons</td>
<td>TX 1005</td>
</tr>
<tr>
<td>Total RCRS Metal (including nickel, vanadium pentoxide, and beryllium)</td>
<td>EPA Method SW846-6020</td>
</tr>
<tr>
<td>*TCLP may be required</td>
<td></td>
</tr>
<tr>
<td><strong>Soils, Sludges, etc.</strong></td>
<td></td>
</tr>
<tr>
<td>BTEX</td>
<td>EPA Method 8021 GC-MS</td>
</tr>
<tr>
<td>TPH</td>
<td>TX 1005</td>
</tr>
<tr>
<td>Total RCRA Metal (including nickel, vanadium pentoxide, and beryllium)</td>
<td>EPA Method SW846-6020</td>
</tr>
<tr>
<td>Total Volatile Organic Compounds</td>
<td>EPA Method SW846-8260</td>
</tr>
<tr>
<td>Total Semi-Volatile Organic Compounds</td>
<td>EPA Method SW846-8270</td>
</tr>
<tr>
<td>*TCLP may be required</td>
<td></td>
</tr>
<tr>
<td><strong>Concrete, Asphalt &amp; Base Materials</strong></td>
<td>Generator Knowledge</td>
</tr>
<tr>
<td>Generator Knowledge</td>
<td>Generator Knowledge</td>
</tr>
<tr>
<td>*If Generator knowledge is not available, use the Soil Testing Protocol.</td>
<td></td>
</tr>
</tbody>
</table>
Contractor shall provide the Port of Houston Authority with written notice of its activities sufficiently in advance, no less than 20 Working Days in advance of such activities, to permit the Port of Houston Authority to conduct such sampling and testing. Laboratory services obtained by the Port of Houston Authority are typically conducted on a standard 10 Working Day turnaround. Contractor shall not reuse any soil without prior written acceptance by the Port of Houston Authority. The determination by the Port of Houston Authority of whether to allow reuse of soil pursuant to this Section 3.19 is within the sole discretion of the Port of Houston Authority. The Port of Houston Authority reserves the right to refuse to permit Contractor to use or reuse any soil.

3.20 **Use of Explosives:**

The use of explosives on Port of Houston Authority property is prohibited.

3.21 **Burning:**

Burning of materials or setting of any fires on Port of Houston Authority property is prohibited.

3.22 **Interference with Port of Houston Authority Operations and Navigation:**

The Contractor shall perform the Work in such a manner so as to not hinder the flow and navigation of ships, barges, cargoes and other vessels to and from the Port of Houston Authority’s facilities, so as to minimize interference with any other operation or work and so as to provide safe conditions at and around the Site.

Federal, state, U.S. Coast Guard and local statutes, laws, rules, regulations, ordinances, codes and rules of common law concerning navigation shall be complied with, and public advertisement, warning signs, buoys or other such requirements shall be complied with at the Contractor’s expense.

3.23 **Work On or Around Port of Houston Authority Grain Elevators:**

If any Project involves Work in or around grain elevators, special safety measures will be required. Any requirements for such Work will be set out in the Special Conditions.

3.24 **Work On or Around Railroad Tracks:**

If any Project involves Work on or around the Port of Houston Authority’s rail systems, special safety measures must be taken. Any requirements for such Work will be set out in the Special Conditions.

3.25 **Compliance with Security Laws and Regulations, etc.:**

(a) Contractor shall comply with (and cause its employees, Subcontractors, agents and other workforce to comply with) all applicable federal, state, local and Port of Houston Authority security rules and regulations and all applicable training and licensing requirements, including without limitation, the facility access regulations set from time to time by the Port of Houston Authority, all applicable rules and regulations of the Transportation Worker Identification Credential (“TWIC”) Program, and all requirements pertaining to the protection of “Sensitive Security Information” as set forth in 49 CFR 1520.

(b) Contractor shall ensure that all of its employees, Subcontractors and other persons needing unescorted access to secured areas of Port of Houston Authority facilities have obtained and have in their possession a valid TWIC when the TWIC Program is in force at Port of Houston Authority’s facilities. Contractor has the responsibility of ascertaining when such program is in force and causing itself,
employees, agents, Subcontractors and all others under its supervision or control to know and understand all TWIC regulations and comply with them. Contractor understands that Port of Houston Authority shall not have any duty whatsoever to provide TWIC escorts for Contractor, its employees, agents, Subcontractors and any others under its supervision or control.

(c) The Port of Houston Authority is not responsible for the cost of compliance for such rules, regulations and requirements. Contractor is required to obtain and be aware of all such rules, regulations and requirements, and represents to Port of Houston Authority that it is in compliance with these requirements.

(d) Contractor shall be fully liable for all damages, and for any fees, fines and penalties assessed against the Port of Houston Authority (including without limitation, damages, fees, fines and penalties as a consequence of the issuance of a notice of violation, warning or other communication from the United States Coast Guard or other Governmental Authority) by reason of Contractor's (or its workforce's) failure to comply with any and all such rules, regulations and requirements. Contractor assumes full responsibility for such violation, warning or other communication and shall immediately notify the Port of Houston Authority in writing of Contractor's receipt of such notice, warning or other communication.

(e) Contractor assumes full responsibility for compliance by all persons under its control with the TWIC Program, and for assuring that such persons timely obtain a TWIC and have a non-revoked TWIC in their possession at all times while in secured or restricted areas of the Port of Houston Authority's facilities, all in accordance with applicable regulations.

(f) Contractor shall notify the Coast Guard and the Port of Houston Authority immediately in writing if any employee's, agent's or Subcontractor's TWIC is revoked, lost, damaged or stolen.

(g) Contractor shall sign such confidentiality agreements (and cause its employees, Subcontractors, agents and other workforce to do the same) as and when requested by the Port of Houston Authority with respect to information considered confidential and/or proprietary by the Authority.

(h) Contractor shall cause itself, its employees, Subcontractors, agents, and all others working under its control or supervision to know, understand and comply at all times with Port of Houston Authority's Credentialing Policy and Procedures as in effect from time to time.

(i) Prior to any employee or agent of Contractor (or any other person authorized by the Contractor) beginning work upon Port of Houston Authority property, Contractor shall obtain, and comply with, current Port of Houston Authority Credentialing Policy and Procedures. All personnel under the control of the Contractor, including Subcontractors, who will enter upon Port of Houston Authority property during the performance of the Work, shall be badged, and shall prominently display such badge, while on Port of Houston Authority property.

(j) IN ADDITION TO AND WITHOUT LIMITING ANY OTHER INDEMNITIES GIVEN BY THE CONTRACTOR UNDER THIS CONTRACT, CONTRACTOR SHALL DEFEND AND HOLD THE PORT OF HOUSTON AUTHORITY INDEMNITEES HARMLESS FROM ANY FAILURE OF CONTRACTOR, CONTRACTOR'S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, OR ANY OTHER PERSONS UNDER ITS CONTROL, SUPERVISION OR DIRECTION, TO OBSERVE ALL APPLICABLE TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC) LAWS AND REGULATIONS, OTHER SECURITY LAWS AND REGULATIONS, INCLUDING THOSE PERTAINING TO SENSITIVE SECURITY INFORMATION OR OTHER SECURITY INFORMATION DEEMED CONFIDENTIAL BY THE PORT OF HOUSTON AUTHORITY, AND ALL ACCESS REQUIREMENTS SET BY THE PORT OF HOUSTON AUTHORITY OR OTHER AUTHORITIES, AS WELL AS ALL OTHER REQUIREMENTS OF THIS CONTRACT, AND CONTRACTOR SHALL FULLY REIMBURSE PORT OF
HOUSTON AUTHORITY INDEMNITEES AND MAKE THEM WHOLE ON ACCOUNT OF ANY DAMAGES, FINES, FEES OR PENALTIES ON ACCOUNT OF SUCH FAILURE.

END OF GENERAL CONDITIONS SECTION 3
SECTION 4. PROSECUTION OF THE PROJECT

4.01 General Obligation:

(a) The Contractor shall (i) supervise and direct the Work, using the Contractor’s best skill and attention, in a good and workmanlike manner and in the best and most expeditious and economical manner consistent with the interests of the Port of Houston Authority, (ii) exercise the degree of care, skill and diligence in the performance of the Work in accordance with and consistent with industry standards for similar circumstances, (iii) utilize its best skill, efforts and judgment in furthering the interests of the Port of Houston Authority, (iv) perform the Work in strict compliance with Applicable Laws, such that the Project, no later than Substantial Completion, will comply with Applicable Laws, and (v) furnish efficient business administration and supervision (collectively, the “Standard of Care”), and perform the Work in accordance with the other requirements of the Contract Documents for the Contract Price and within the Contract Time. The Contractor shall not be relieved of its obligations to timely and properly perform the Work in accordance with the Contract Documents either (1) on account of activities or duties of the Port Contract Representative, Port Construction Representative, Inspectors, or Port of Houston Authority or consultant to the Port of Houston Authority relating to administration of the Contract, or (2) because tests, inspections, acceptances or approvals were required from or performed by a person other than the Contractor and such person did not timely perform such inspection or test or issue such acceptance or approval. No inspection or testing, failure to inspect or test, or acceptance or approval by a laboratory or Inspector shall be construed as an acceptance or approval of defective or nonconforming Work.

(b) Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, Equipment and Materials, 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. All Equipment and Materials to be incorporated in the finished Work shall be new, of the highest quality and of the best grade of standard manufacture.

(c) The Contractor must perform at least twenty-five percent (25%) of the total dollar value of the portion of the Contract Price attributable to the Work performed in the field with its Own Forces. The existence and extent of such forces will be verified by certified payrolls submitted in accordance with the Prevailing Wage Scale section of the Contract Documents and as required under these General Conditions.

(d) The Contractor shall be responsible to the Port of Houston Authority for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

4.02 Independent Contractor:

It is agreed between the parties that the Contractor is and shall be an independent contractor. Nothing in the Contract Documents shall create a relationship of employer and employee, principal and agent, joint venture, or partnership between the Port of Houston Authority, on the one hand, and the Contractor or any of its employees, Subcontractors, Suppliers or agents of any thereof, on the other hand. Neither the Contractor nor any of its employees, Subcontractors, Suppliers or agents of any thereof, shall have the ability to bind or obligate the Port of Houston Authority for any purpose whatsoever. As an independent Contractor, the Contractor: (a) assumes full responsibility for the safety of all persons employed or utilized by the Contractor or under the Contractor’s control and supervision; (b) shall maintain complete supervision and control over the Contractor’s agents, employees, and Subcontractors; and (c) shall prosecute the Work at such time and seasons, in such order or precedence, and in such manner, using such methods as Contractor shall choose; provided, however, that in all instances Contractor shall and the order, time, techniques, sequences, procedures, manner, means and methods of prosecution of the Work shall comply with the Contract Documents, including, without limitation, the Contractor’s Standard of Care and Contract...
Time, and Contractor shall have no right to perform any portion of the Work or utilize means, methods, techniques, sequences, procedures or individuals in violation of the Contract Documents or that may damage the Work or decrease the life expectancy of the Project. In no event shall the Port of Houston Authority have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Port of Houston Authority in the Contract Documents and the exercise of any of the rights and authority granted the Port of Houston Authority in the Contract Documents (including, without limitation, ordering Changes in the Work, rejecting proposed means, methods, techniques, sequences or procedures, and directing suspension, rescheduling, re-execution or correction of the Work) shall not be construed as or deemed to be control of, charge of, or responsibility for or violation of Contractor’s responsibility for and rights with respect to such construction means, methods, techniques, sequences, procedures, safety precautions and programs. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the effectiveness, in light of the Standard of Care and other Contract provisions, and jobsite safety thereof and shall be fully and solely responsible for the effectiveness, in light of the Standard of Care and other Contract provisions, and jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be effective, in light of the Standard of Care and other Contract provisions, or may not be safe, the Contractor shall give timely written notice to the Port of Houston Authority and shall not proceed with that portion of the Work without further written instructions from the Port of Houston Authority.

4.03 Character and Conduct of Workmen:

The Contractor shall at all times furnish an adequate supply of qualified and legal workers and proper Equipment and Materials and enforce strict discipline and good order among its employees and other persons performing the Work. The Contractor shall not employ on the Work any person known to be unfit or any person known to be unskilled with respect to the task assigned to him. Only skilled Field Supervisors and workers shall be employed on work requiring special qualifications and skills. Common laborers are not skilled workers.

The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall require the same of its Subcontractors and shall also use its best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

At no time shall any individual engage in any illegal activities at the Site, consume at or bring alcoholic beverages onto the Site, or use illegal drugs at the Site. The Contractor shall remove from the Site any person who in the discretion of the Port Contract Representative commits trespass, is disorderly or otherwise engages in inappropriate or offensive conduct, harasses the Port of Houston Authority, its guests, employees or patrons, works in an unsafe manner, appears to be under the influence of alcohol or drugs, exhibits incompetence or is otherwise unsatisfactory. Such person or persons shall not be employed again on any portion of the Work. Contractor acknowledges and agrees that exercise of the Port of Houston Authority’s rights under this Section 4.03 shall not be the basis for any Claim, that Contractor will not assert or pursue and has no right to assert or pursue any Claim as a result of the exercise of the Port of Houston Authority’s rights under this Section 4.03, and exercise of the Port of Houston Authority’s rights under this Section 4.03 shall not entitle Contractor to any relief or recovery, whether for additional compensation, additional time, damages or otherwise.

4.04 Cooperation with the Port of Houston Authority and Others:

(a) The principal business of the Port of Houston Authority in the movement of cargoes will take precedence over all other considerations in conflicts of scheduling of operations including without
limitation those operations of the Contractor. The Contractor shall cooperate with the Port ofHouston
Authority and with other contractors and each will so arrange its schedule such that the entire Work is
completed most expeditiously.

The Port of Houston Authority shall have the right, but not the obligation, to assist the Contractor
and any other party involved with the Project in scheduling Work. The Contractor shall not be entitled to
assert a Claim for additional compensation (whether in the form of damages, an adjustment of the Contract
Price or otherwise) or other relief or to a Change as a result of such Port of Houston Authority business
operations, schedule adjustments and coordination; provided, however, that the foregoing shall not prevent
the Contractor from seeking an extension of the Contract Time pursuant to Section 8.11.

(b) The Contractor understands and accepts that the Port of Houston Authority will have other
contractors performing work on the Project or on Port of Houston Authority property. The Contractor shall
cooperate with the Port of Houston Authority and such other contractors and coordinate its Work with the
work of other contractors. Subject to Section 6, the Contractor shall make any revisions to the Baseline
Schedule or Revised Baseline Schedule, as applicable, deemed necessary after a joint review and mutual
agreement of the parties, and, if the result is an extension of the Contract Time, by a signed Change Order
setting forth the agreed adjustment to the Contract Time. The resulting schedules shall then constitute the
schedules to be used by the Contractor, separate contractors and the Port of Houston Authority until
subsequently revised in accordance with Section 6.

The Contractor shall afford the Port of Houston Authority 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 Contractor’s construction and operations with theirs as required by
the Contract Documents.

The Contractor shall be responsible for inspecting and accepting the work of any separate Port of
Houston Authority contractor and determining whether such work is suitable to receive Contractor’s Work.
The Contractor shall, prior to proceeding with any portion of the Work that requires proper performance of
work by other Port of Houston Authority contractors, promptly report to the Port of Houston Authority any
apparent discrepancies or defects in such other work that would render it unsuitable for such proper
performance. Failure of the Contractor to so report shall constitute an acknowledgment that the Port of
Houston Authority’s separate contractor’s completed or partially completed work is fit and proper to receive
the Contractor’s Work.

The Contractor shall promptly remedy damage caused by the Contractor to completed or partially
completed construction or to property of the Port of Houston Authority or separate contractors. Should the
Contractor cause damage to the work or property of any separate contractor, the Contractor shall pay for all
costs attributable thereto, including without limitation any costs associated with design professionals, and shall
resolve any claims of any such other contractor immediately. IF SUCH SEPARATE CONTRACTOR SUES
THE PORT OF HOUSTON AUTHORITY ON ACCOUNT OF ANY DAMAGE ALLEGED TO HAVE BEEN
CAUSED BY THE CONTRACTOR, THE CONTRACTOR SHALL DEFEND AND INDEMNIFY THE PORT
OF HOUSTON AUTHORITY INDEMNITEES PURSUANT TO SECTION 11.08.

If a dispute arises among the Contractor, separate contractors and the Port of Houston Authority
as to the responsibility under their respective contracts for maintaining the premises and surrounding area
free from waste materials and rubbish, the Port of Houston Authority may clean up and allocate the cost
among those responsible as the Port of Houston Authority determines to be reasonable.

(c) The Contractor agrees and acknowledges that it has no right to assert or pursue and may
not make or enforce any Claim against the Port of Houston Authority based on any delay or interference
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The Port of Houston Authority shall be reimbursed by the Contractor for costs incurred by the Port of Houston Authority which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Port of Houston Authority shall be responsible to the Contractor for costs incurred by the Contractor because of damage to the Work or defective construction of a separate contractor, so long as the Contractor complies with the requirements of Sections 4.04 and 8. Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Section 8.

Contractor shall bear the costs attributable to its failure to comply with this Section 4.04, including without limitation all costs associated with design professionals or other consultants and costs of correction of the Work, and liable for all damages caused thereby.

4.05 Progress Meetings:

Contractor shall attend regularly scheduled progress meetings, which shall occur as frequently as required by the Port of Houston Authority, during which meetings the Port of Houston Authority, any Design Consultant or other Port of Houston Authority consultant, Contractor and Subcontractors may discuss such matters as Work procedures, progress, scheduling and coordination. Progress meetings shall be held at the construction field office or other location as designated by the Port Construction Representative.

Unless instructed otherwise by the Port of Houston Authority, Contractor shall prepare in advance of each such meeting a written agenda outlining the topics of discussion for such meeting, shall distribute copies thereof prior to the beginning of each such meeting; and shall be prepared to conduct such meetings. Such agenda shall include: (1) review of minutes of previous meetings; (2) review of Work, Progress Schedules, Submittals, pay estimates and payroll; (3) field observations, problems and decisions; (4) identification of problems which impede planned progress; (5) review of Schedule of Submittals and status of Submittals, including record drawings showing current as-built conditions; (6) review of RFI and Change Proposal status; (7) Change Order status; (8) review of off-site fabrication and delivery schedules; (9) maintenance of Baseline Schedule (or latest approved Revised Baseline Schedule); (10) corrective measures to regain Baseline Schedule (or latest approved Revised Baseline Schedule); (11) planned progress during succeeding work period; (12) coordination of projected progress; (13) maintenance of quality and Work standards; (14) effect of proposed changes on the Baseline Schedule (or latest approved Revised Baseline Schedule) and coordination; and (15) other items relating to the Work. The Contractor shall provide all information required during the meeting and be prepared to discuss each agenda item.

Unless instructed otherwise by the Port of Houston Authority, Contractor shall be responsible for taking accurate notes reflecting, to the satisfaction of the Port of Houston Authority, the minutes of such meetings and, within two (2) Working Days after each such meeting, Contractor shall distribute to the Port of Houston Authority, Design Consultant and any other attendees of such meetings, copies of such minutes, which shall at a minimum include a list of resulting action items, responsible parties and dates necessary to timely complete such action items such that the Contractor maintains the progress of the Work in accordance with the latest accepted Schedule.

4.06 Additional Information:

The Contractor shall respond to any questions and submit to the Port Construction Representative schedules, payrolls, reports, estimates and records, and such other data and information relating to the Work, Equipment and Materials, and Contractor’s performance of the Contract as the Port Construction Representative may from time to time require or request. Such data and information shall be submitted in such form and detail as the Port Construction Representative may direct.
4.07 **Drawings and Specifications Furnished by the Port of Houston Authority:**

The Contractor will be furnished the Drawings and Specifications in electronic form. Printing of the Drawings and Specifications as necessary for performance of the Work shall be the Contractor’s responsibility and shall be at the Contractor’s expense.

4.08 **Documents and Samples at the Site:**

The Contractor shall maintain one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of accepted Shop Drawings, Product Data, Samples and similar required Submittals. These shall be available to the Port of Houston Authority and Design Consultant and other Port of Houston Authority consultants, if any, and shall be delivered to the Port of Houston Authority upon completion of the Work. The record copy of accepted Shop Drawings, Product Data, Samples and similar required Submittals, erection drawings and as-built drawings shall be kept at the Site. All other record documents also shall be kept at the Site, unless the Port Construction Representative expressly allows such records to be kept at another specified location.

Contractor shall maintain daily logs in such detail and format as required by the Port of Houston Authority, which logs shall be available for the Port of Houston Authority’s and any Design Consultant’s or other Port of Houston Authority consultant’s review at any time during normal working hours, and which shall record the progress of the Work with emphasis on: (a) recording all actual as-built start and finish dates for all work activities identified on the Contractor’s base-line Project Schedule or the latest Revised Project Schedule, as applicable; and (b) recording all Work-related information pertaining to weather, injuries and accidents, Work re-performed, Subcontractors working on the Site, number of workers, any problems and/or delays experienced, including reasons therefore and corrective steps taken, and any other data as the Port of Houston Authority may require.

4.09 **Requests for Information:**

If the Contractor desires any information regarding the Work or the Project or information in respect of, any interpretation of, or direction with respect to a provision or requirement of the Contract Documents, then the Contractor shall prepare an RFI, setting forth in reasonable detail the matters as to which the Contractor desires such information or interpretation, and submit such writing to the Port Construction Representative. In situations in which a Design Consultant is utilized for this Project, the Contractor shall send the RFI to the Port Construction Representative and a copy of the transmittal letter to the Design Consultant and Inspector. The Port Construction Representative (or Design Consultant, if appropriate) shall review such RFI and issue an answer in response thereto, which response shall be final and conclusive as to the matters addressed therein.

If the Contractor believes that additional cost or time is involved or that it is entitled to a Change, any damages or other relief because of clarifications or instructions issued by the Port of Houston Authority in response to the Contractor’s notices or requests for information pursuant to this Section 4.09, the Contractor shall make Claims as provided in Section 8. If Contractor does not comply with Section 8, Contractor shall be deemed to have agreed that such clarifications or instructions do not entitle Contractor to any Change, additional time, additional compensation, other relief or damages and to have waived any right it might have to such Change, time, compensation, other relief or damages.

4.10 **Submittals to be Furnished by the Contractor after Award:**

(a) The Contractor shall prepare, or cause to be prepared, and submit to the Construction Manager (or such other individual specified in the Contract Documents as responsible for reviewing a specific Submittal) for review, complete design and detailed Shop Drawings, Product Data, Samples and
other pertinent information showing all Equipment and Materials and details of Work to be incorporated into the Project and such other matters as requested by the Port Contract Representative or required by the Contract Documents. In instances in which the Contract Documents provide for a Submittal to be provided directly to someone other than the Construction Manager, Contractor shall provide a copy to the Construction Manager of such Submittal.

All Submittals shall be delivered to the Construction Manager no later than ninety (90) calendar days after the Start Work Date, unless specifically waived or extended by the Port Construction Representative.

No portion of the Work requiring Submittals shall be performed and no Equipment and Materials shall be ordered or fabricated before review of and a response permitting Work based on the applicable Submittals by the Construction Manager.

(b) Within ten (10) Working Days after the Contractor has been notified of the award of Contract, the Contractor shall prepare for the Construction Manager’s acceptance, a Submittal Schedule (“Schedule of Submittals”) which is coordinated with the Baseline Schedule or Revised Baseline Schedule, as applicable, and allows the Construction Manager and Design Consultant, if applicable, reasonable time to review Submittals. Such Schedule of Submittals shall be in a form acceptable to the Construction Manager. At a minimum, the Schedule of Submittals shall include all Submittal items and packages that are required by the Contract Documents and shall indicate all proposed submittal dates and all proposed response dates from the Port Authority in order for the Contractor to maintain a critical path Baseline Schedule that meets all Milestones deadlines and the Contract Time. Contractor shall and keep current the Schedule of Submittals during the performance of the Work.

Submission of Submittals shall be made sufficiently in advance of Contractor’s need for the work covered by such Submittals so that all persons reviewing the Submittal have a reasonable amount of time to review the Submittal, taking into account the nature and number of Submittals, and so as to maintain the orderly progress of the Work, but in no event less than 20 days prior to the time that Contractor expects to incorporate the work covered by such Submittal into the Work. Contractor understands and acknowledges that additional time may be required for review by any Design Consultant or other consultants to the Port Authority and Contractor shall provide for such additional time in making its Submittals. Moreover, submission of Submittals shall be made in such sequence that the persons reviewing such Submittals will have all of the information necessary for such review.

The Contractor will not be entitled to any extension of time or other relief due to a delay associated with Contractor’s failure to submit Submittals in sufficient time for review by the Construction Manager and, where required, Design Consultant and others.

(c) Submittals are not and, notwithstanding any review and acceptance thereof by the Port of Houston Authority or any Design Consultant, shall not be construed to be Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to perform the Work in conformance with the Contract Documents, including how it intends to conform to the information given and the design concept expressed in the Contract Documents.

The Port of Houston Authority and/or Design Consultant will review and accept, reject or take other appropriate action upon the Contractor’s Submittals but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The purpose of review and acceptance of Submittals by the Port of Houston Authority and/or Design Consultant is merely an effort on the part of the Port of Houston Authority to determine whether the Contractor is complying with the requirements of the Contract Documents and shall in no way operate as a waiver of any right of the Port of Houston Authority or any obligation of Contractor hereunder, nor in any way relieve Contractor of any of its obligations hereunder, including, without limitation, its responsibility for proper
functioning, fit and conformity with the Contract Documents. Review and acceptance 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 and Materials or systems, or for ensuring the adequacy of a plan or compliance with Applicable Laws, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Port of Houston Authority’s and/or Design Consultant’s review and acceptance of the Contractor’s Submittals shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Port of Houston Authority’s and/or Design Consultant’s review and acceptance of a specific item shall not indicate review and approval of an assembly of which the item is component.

(d) Submittals shall be reviewed, approved, checked, stamped indicating approval by the Contractor and compliance with the Contract Documents, and signed by the Contractor before being submitted for review as set forth herein. The Contractor shall be solely responsible for the accuracy and correctness of Submittals whether furnished by Contractor or by others. Contractor’s submission of Submittals to the Construction Manager shall constitute Contractor’s representation, with respect to each Submittal, that Contractor has determined and verified all Equipment and Materials, field measurements and field construction criteria related thereto, that Contractor has checked and coordinated the information contained within such Submittal with the requirements of the Work and the provisions of the Contract Documents, and that such Submittal satisfies all such requirements and provisions. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Construction Manager without action.

The Contractor shall provide professional services which constitute the practice of architecture or engineering as required by the Contract Documents for the Work or as the Contractor needs to provide such services in order to carry out the Contractor’s responsibilities for construction means, methods, techniques, sequences and procedures. If professional design services or certifications by a design professional related to systems, Equipment and Materials are required of the Contractor by the Contract Documents, the Contractor shall cause such services or certifications to be provided by a properly licensed design professional, licensed in the State of Texas, acceptable to the Port Contract Representative, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such professional. Submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional’s written approval when submitted to the Construction Manager. The Port Authority and Design Consultant shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications and approvals performed by such design professionals.

(e) The person reviewing Submittals will return them to the Contractor marked to indicate whether the Contractor may proceed with the Work based on the Submittal as is or with specified changes, whether the Contractor must make changes to the Submittal and resubmit it, or whether the Submittal is rejected and the Contractor must submit another Submittal. Informational Submittals upon which the Construction Manager, Design Consultant or others are not expected to take responsive action may be so identified in the Contract Documents, but nothing shall preclude review and action upon any such Submittal. Submittals which are not required by the Contract Documents may be, but are not required to be, returned without action.

The Work shall be in accordance with accepted Submittals, except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Construction Manager’s (or, Design Consultant’s) review, acceptance or approval of Submittals unless the Contractor has specifically informed the Construction Manager in writing of such deviation at the time of submittal and a Change Order or Construction Change Directive has been issued expressly authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the Construction Manager’s (or, Design Consultant’s) approval or acceptance thereof.
Submittals marked indicating that there are no exceptions, that the Submittal is accepted as submitted, or is accepted with noted corrections may be used for performance of the Work and fabrication prior to the reviewer’s further review, unless specific instructions are given otherwise by such reviewer. Submittals marked in any other manner, including those indicating that they must be resubmitted for any reason, may not be used by the Contractor for the Work, whether for activities on the Site or fabrication off the Site, prior to the reviewer’s further review and acceptance. The time required for revision and/or resubmission of Submittals shall not entitle the Contractor to any extension of time or other relief.

The Contractor shall make the necessary changes to Submittals returned and marked indicating that changes are required and, with respect to such returned Submittals, within five (5) working days (or sooner so as not to delay the Work) following receipt of any queries or comments, submit revised Submittals for another review following the same procedure as set forth above. The Contractor shall call the reviewer’s specific attention to, in a writing attached to or by writing on such resubmitted Submittals, any revisions other than those required by the reviewer pursuant to a prior review. In the absence of such written notice, acceptance of a resubmission shall not apply to such revisions.

All notes referenced on “Approved as Noted” or “Exceptions as Noted” or similar responses to the Contractor shall be completed, fulfilled and/or acknowledged in writing, as applicable, to the Construction Manager, within five (5) calendar days of receipt of the “As Noted” response to the Contractor.

If at any time before Final Completion of the Work Changes are made that necessitate revising reviewed Submittals to reflect the impact of the Change, then the Contractor shall make such revisions and resubmit the affected Submittals to the reviewer, following the same procedure set forth above, for additional review, such review to be conducted prior to effecting the Changes involved. In the event Contractor desires to proceed other than as reflected in an accepted Submittal, Contractor shall make revisions to and resubmit the affected Submittals to the reviewer, following the same procedure set forth above, for additional review, such review to be conducted prior to Contractor proceeding other than in accordance with the accepted Submittal.

(f) In the event Contractor believes any markings on or decisions of the Construction Manager (or Design Consultant or other reviewer) regarding any Submittal is inconsistent with or would constitute a Change or compliance with any such marking or decision would entitle Contractor to additional time (whether in the form of an adjustment to the Contract Time, relief from its obligation to perform within the Contract Time or by any Milestone, or otherwise), additional compensation (whether in the form of damages, an adjustment to the Contract Price or otherwise) or other relief, Contractor shall assert a Claim in accordance with Section 8. If Contractor does not comply with Section 8, Contractor shall be deemed to have agreed that such markings and decisions do not entitle Contractor to any Change, additional time (whether in the form of an adjustment to the Contract Time, relief from its obligation to perform within the Contract Time or by any Milestone, or otherwise), additional compensation (whether in the form of damages, an adjustment to the Contract Price or otherwise) or other relief and to have waived any right it might have to any such Change, additional time, additional compensation, or other relief.

(g) Unless the Port Construction Representative instructs the Contractor otherwise, Contractor shall transmit each Submittal to the Construction Manager through Microsoft Office Sharepoint Server (“MOSS”). The transmittal shall include the date and Submittal number; Project title and number; the names of the Contractor, Subcontractor, Supplier and manufacturer; identification of product or material being supplied; location where product or material is being installed; and the Specification Section number. Identification of deviations from Contract Documents must be clouded on submitted drawings, and itemized and detailed on a separate 8 1/2" x 11" sheet titled “DEVIATIONS FOR ______________.” If no deviations exist, this sheet must state so. All design deviations must be signed and sealed by a Professional Engineer who is licensed in the State of Texas. Transmittals will be numbered automatically by the MOSS system. Each Submittal shall only contain one type of Work, Material, or Equipment. Mixed Submittals will not be accepted.
When required in the Specifications, the Contractor shall submit the manufacturer’s certificate of compliance for review by the Construction Manager. Certificates may be recent or previous test results on material or product, subject to the approval of the Port Construction Representative.

The Port Construction Representative, Design Consultant and Contractor shall be responsible for obtaining their own copies of Submittals for office and/or field use. The Contractor shall be responsible for furnishing Subcontractors and Suppliers with all Submittals as may be necessary for the coordination of the activities of all Subcontractors and Suppliers.

Each Shop Drawing shall be labeled to show such drawing was prepared by or for the Contractor and shall be identifiable by serial numbers and a descriptive title thereon. The seal of a Registered Professional Engineer, licensed in the State of Texas, shall be affixed to each Shop Drawing when such Shop Drawing reflects an engineering design. Shop Drawings shall accurately and distinctly show field and erection dimensions; arrangement and section views; relation to adjacent materials or structures, including complete information for making connections between Work under this Contract and work under other contracts; kinds of materials and finishes; parts list and descriptions; assembly drawings of equipment components and accessories showing their respective positions and relationships to the complete equipment package; and where necessary for clarity, identify details by reference to drawing sheet and detail numbers, schedule or room numbers as shown on the Contract Drawings. Shop Drawings shall be to scale, providing a true representation of the specific equipment or item to be furnished. In addition, Contractor shall submit CADD files for each Shop Drawing.

The Contractor shall mark each copy of submitted Product Data to identify applicable products, models and options to be used in this Project. The Contractor shall also supplement manufacturers’ standard data to provide information unique to this Project, where required by the Specifications. For products specified only by reference standard, the Contractor shall provide product manufacturers, trade name, model or catalog designation and applicable reference standards.

All Samples shall be reviewed and signed by a Licensed Professional Engineer, licensed in the State of Texas, acceptable to the Port Contract Representative. All samples shall be provided in such form as required by the Specifications.

(h) If, after execution of the Contract and prior to submittal of applicable Shop Drawings or other Submittal, the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the Contractor may do so in writing setting forth the following:

1. Full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; and
2. Basis for substitution.

If the Port Contract Representative and Contractor agree to the substitution, such agreement shall be considered a representation by Contractor that (1) the proposed substitution conforms and meets all the requirements of the pertinent Specifications and requirements of the Contract Documents and as shown on the Drawings and required by the Project, and (2) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Port of Houston Authority. In the event that any substitution, including design Changes, is accepted by the Port Contract Representative or is deemed to have been accepted by the Port of Houston Authority or Port Contract Representative in a court of law, the Contractor shall assume responsibility for and pay for: (a) any and all additional costs pertaining to any redesign and adverse consequences of such redesign; (b) any and all
costs of replacement, corrections or adjustments to the Work, adjoining Work and the Port of Houston Authority’s existing property; and (c) any and all costs or damages arising from adverse impacts to the critical path of the Baseline Schedule, or the latest accepted Revised Baseline Schedule, and/or any delays in the Contract Time arising out of such substitution. Proposals for substitution shall be submitted in triplicate to the Construction Manager in sufficient time to allow the Construction Manager no less than twenty (20) Working Days for review. No substitutions will be considered or allowed without the Contractor’s submittal of complete substantiating data information and stated here and before.

Substitutions and alternates may be rejected without explanation and in the sole discretion of the Port of Houston Authority.

4.11 Allowances:

(a) The Contract Price includes all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Port of Houston Authority may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection. Equipment and Materials under an allowance shall be selected by the Port of Houston Authority in sufficient time to avoid delay in the Work, provided that the Contractor informs the Port of Houston Authority of the deadline for a decision in sufficient time for the Port of Houston Authority to make a timely decision. Contractor shall not start or purchase any Work specified to be accomplished under an allowance until Contractor submits firm prices for the Work to the Port Contract Representative and the Contractor receives from the Port Contract Representative written instructions to proceed with the Work.

(b) Unless otherwise provided in the Contract Documents:

(i) allowances shall cover the cost to the Contractor of Equipment and Materials delivered at the Site and all required taxes, if any, less applicable trade discounts;

(ii) Contractor’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 Price but not in the allowances;

(iii) whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (a) the difference between actual costs and the allowances under Section 4.11(b)(i) and (b) changes in Contractor’s costs under Section 4.11(b)(ii).

4.12 As-Built Drawings and O&M Manuals:

(a) Contractor shall maintain at the Site one set of Drawings showing as-built conditions (including without limitation any conditions discovered to be at variance with the information as indicated on the original Drawings), locations and details of any and all Work which is installed under this Contract. Such set shall include mark ups of the latest issued Drawings and shall indicate actual locations of utilities and all Changes in the Work which occurred during the course of the construction. Two (2) hard copy sets of Drawings and Specifications with neat and legible as-built drawings (indicating Changes in red) shall be returned to the Port Contract Representative within thirty (30) days following the final inspection. Such “as-built” drawings shall be certified by Contractor as accurately and completely depicting the Project as the completed work and shall be reproducible.

In addition, Contractor shall provide one complete set of white background prints of all plumbing, mechanical and electrical Drawings, and all other systems requiring concealed piping, conduit or utilities which form a part of the Work. Immediately after such Work is installed, the Contractor shall carefully draw
on these prints, in red ink, the as-built condition of any and all Work which is installed under this Contract. In marking such as-built conditions, Contractor shall indicate by measured dimension to building corners or other permanent monuments, exact locations of all piping, conduit or utilities concealed in concrete slabs, behind walls, within ceilings or below grade. Such prints shall also indicate exact locations of valves, pull boxes and similar items as required for maintenance or repair service.

(b) The Contractor shall, at the end of the job, make all corrections to the tracings or other applicable documentation of its Submittals so that they reflect the finished Work as built and shall deliver to the Port Contract Representative either the tracings or reproducible prints thereof on translucent paper. All Shop Drawings and erection drawings reflecting as-built conditions shall be provided to the Port Contract Representative in the current version of CADD as well as in hard copy.

(c) Prior to Final Completion, Contractor shall prepare and provide operations and maintenance manuals for the items as listed in the Specifications. Contractor shall arrange items that are related in their operation and maintenance needs together. Contractor will be required to submit, in an outline format, its intended arrangement of required items for review and acceptance by the Port Contract Representative prior to producing the manuals. In addition, Contractor shall submit each O&M manual in a PDF Binder Portfolio format for review and approval by the Port Contract Representative. The Port Contract Representative shall have sole discretion of acceptance of O&M manual contents and composition.

Upon approval of the O&M manual, the Contractor shall submit six (6) complete hard copy sets of each approved O&M manuals. Final approved copies to be bound 4:1 plastic Coil Binding, 8.75" x 11.25" oversize (35mil) Blue Polyethylene Covers, each section shall be divided by 90# Double Reverse Collated Index Tabs printed on both sides. With an 8”x11” polypropylene CD sleeve insert at the back of each manual to insert the finalized manuals on CD.

The O&M manual shall be professionally composed and complied and shall not be an assembly of cut sheets. Each page of the O&M manual shall be numbered sequentially.

The contents of the O&M manuals shall be generally organized as follows:

- **Introduction**: Introduces the reader to the facility. Outlines the structure, content, how to use the manual, and includes a brief outline of the various systems covered. In addition, this chapter contains a list of emergency contacts and a list of supplementary material available on the facility such as:
  - Design/Construction Specifications
  - Submittals File
  - Completion Report
  - As-built Drawings
  - Materials List
  - Certified Tests and Reports
    - Civil/Sanitary
    - Mechanical/HVAC
    - Electrical

- **Safety Data**: Safety hazards commonly associated with the operation of system/equipment applicable to the facility are identified and their prevention is discussed.

- **Utility Systems**: Discusses the various site utility systems that interface with the facility. These include water supply systems, sanitary waste, electrical, natural gas, communications, security, and storm water, etc.
• **Building Interior & Exterior**: Includes housekeeping and general maintenance of the facility. The importance of conduction and annual inspection is discussed together with record keeping forms for conducting the inspections.

• **Plumbing**: O&M of the domestic water and sanitary waste systems.

• **Fire Protection**: O&M of the fire protection wet/dry pipe sprinkler systems.

• **Heating, Ventilating & Air Conditioning (HVAC)**: O&M of the building's HVAC systems, including automated controls and exhaust, space heating, and central air systems.

• **Fire Detection & Intrusion Alarms**: O&M of fire detection and intrusion detection and alarm systems (wet/dry pipe sprinkler).

• **Electrical**: O&M of power distribution equipment and backup/emergency electrical systems (uninterruptible power supply, generator).

• **Conveying Systems**: General information and preventive maintenance for elevators, escalators, wheel chair lifts, conveyors, etc.

• **Other Systems Based on Facility Requirements**: General information and preventive maintenance requirements for other systems and equipment not already identified.

• **Operating Logs**: General information and instructions for using maintenance log forms. A listing of maintenance tasks with their recommended frequencies of performance is included.

• **Maintenance Charts**: Maintenance charts include maintenance frequency checklists, maintenance summary, lamp replacement data sheet, equipment data sheets, recommended maintenance and service contacts, and a recommended work order form.

• **Manufacturers' Literature**: Identifies manuals, cut sheets, etc., from equipment manufacturers that amplify information provided within the system-level O&M manual. Manufacturers' literature generally provides procedures to operate, maintain, troubleshoot, and repair specific items at the equipment level. This information is contained in a separate volume of binders, identified by facility/system, for easy reference. Specific material or complete documents can also be electronically scanned for its 'on-line' use, such as linking from the system-level manual.

• **Description - System-Level**: Description of the system and its purpose, how it operates, and any interfaces it may have. A table can provide overall system design criteria, i.e. flow, pressure, temperature, capacity, power requirements, etc.

• **Operating Procedures - Controls/Start-up/Shutdown/Emergency Over-Ride/Seasonal Changeover**: Operating instructions include equipment configurations for each mode of operation, e.g. valve positions, control settings, intended operating strategies, and break-in procedures.

• **Problems and Solutions - Troubleshooting**: System-level troubleshooting tables guide maintenance personnel, via fault tree analysis, in a sequential, step-by-step isolation of a system problem to identify faulty equipment. Typical malfunctions, tests or inspections, and corrective actions or recommendations to correct malfunctions are included.
• **Preventive (Planned) Maintenance (PM) - Procedures/Intervals:** Maintenance tasks are developed for equipment that comprises the system. Preventive and corrective maintenance is discussed. Scheduled intervals (e.g., daily, weekly, monthly, etc.) are determined and assigned to PM tasks to maximize systems run time, thereby reducing corrective maintenance tasks.

4.13 **Progress Photographs:**

Within the last three (3) days of each calendar month, the Contractor shall have taken by a professional photographer four (4) separate photographic views of the Project as directed by the Port of Houston Authority’s Inspector, which photographic views shall show the status of the Work as of the dates taken. By the first day of the following month, two 8 inch by 10 inch enlargements of each such photographic view (for a total of eight (8) such enlargements) shall be delivered to the Port of Houston Authority’s Inspector, along with a copy of the digital file for each such view. All photographs shall be in color and shall be of high resolution, clarity and sharpness, in digital format sufficient to produce 8 inch by 10 inch enlargements with a minimum resolution of 300 dots per inch (dpi). Such digital files shall not be resized, cropped, touched-up, or otherwise manipulated. The name and address of each photographer shall appear on the reverse side of each printed photograph. The face of each such enlargement shall be annotated with the name of the Contractor, the name of the Project, the view and the date on which the photographs were taken. The Port of Houston Authority shall be the sole judge of the quality of the finished product.

4.14 **Lines and Grades:**

The Port of Houston Authority will establish base lines and benchmarks for control with respect to alignment and elevation of Work. The Contractor shall provide and maintain accurate lines and grades at all times. The Port of Houston Authority may, but is not obligated to, check lines and grades periodically and may pursuant thereto advise the Contractor of any errors found, and the Contractor shall immediately correct any such errors; provided, however, that the Contractor shall be solely responsible for the accuracy of the Work and its conformance to the Contract Documents. In the event that the Port of Houston Authority is required to reestablish such base lines and benchmarks due to the Contractor’s failure to comply with the Standard of Care, the Contractor shall be responsible for the cost to the Port of Houston Authority of reestablishing such base lines and benchmarks. The Contractor (or its surety) shall pay such cost to the Port of Houston Authority upon demand by the Port of Houston Authority, or, at its option, the Port of Houston Authority may withhold from the Contractor or its surety or offset such cost against any amount due to the Contractor or its surety under the Contract or otherwise under Applicable Law.

4.15 **Installation of Mechanical and Electrical Work:**

The Contractor shall verify that utility requirement characteristics of operating Equipment are compatible with existing or planned utilities. The Contractor shall coordinate space requirements and installation of mechanical and electrical work which are indicated diagrammatically on Drawings. The Contractor shall follow routing shown for pipes, ducts and conduit, as closely as practicable, place runs parallel with the line of buildings and utilize spaces efficiently to maximize accessibility for other installations, for maintenance, and for repairs. Further, the Contractor shall conceal pipes, ducts and wiring within the construction in finished areas, except as otherwise indicated, and shall coordinate the locations of fixtures and outlets with finish elements.
4.16 **Parking, Security of Work, Storage and Related Matters:**

The Contractor shall arrange for and provide parking for all individuals providing Work at the Site and any off-Site storage for Equipment and Materials.

Equipment and Materials for use in the Work shall be stored at the Site in such a manner that prevents damage and deterioration. Equipment and Materials that have been damaged or in any way become unfit for use will not be accepted in the Work.

Prior to Final Completion of the Work, all unused Equipment and Materials and storage facilities shall promptly be removed by the Contractor.

4.17 **Cutting and Patching:**

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Port of Houston Authority or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Port of Houston Authority or a separate contractor except with written consent of the Port of Houston Authority and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Port of Houston Authority or a separate contractor the Contractor’s consent to cutting or otherwise altering the Work.

4.18 **Material Furnished by the Port of Houston Authority:**

If any Equipment and Materials is to be furnished by the Port of Houston Authority, a listing of all such Equipment and Materials will be set out in the Special Conditions. The Contractor shall be responsible for receiving such Equipment and Materials, other than those which are specified to be received by the Port of Houston Authority. The Contractor shall be responsible for unloading, securing, and installing all such Equipment and Materials. Contractor will promptly notify the Port of Houston Authority, in writing, of any delivery of such Equipment and Materials. Contractor shall perform the Work in such a manner so as to preserve any and all guarantees and warranties associated with such Equipment and Materials.

4.19 **Equipment and Materials Furnished by the Contractor:**

The Contractor shall provide and use accepted Equipment and Materials in sufficient qualities and quantities to facilitate diligent prosecution of the Work to the end that the Work will be completed within the Contract Time and otherwise in accordance with the Contract Documents. If at any time the Equipment and Materials being used, in the opinion of the Port Construction Representative, are faulty or inadequate, or will prevent the Work from being completed in accordance with the Contract Documents or within the Contract Time, such Equipment and Materials shall be replaced or supplemented with Equipment and Materials satisfactory to the Port Construction Representative.

4.20 **Water for Construction:**

Water for construction purposes may or may not be available from the Port of Houston Authority’s fire hydrants. Whether water will be available from such hydrants will be stated in the Special Conditions. If available, Contractor shall use only reasonable amounts and must install a meter and utilize appropriate backflow protection (**i.e.,** air gap or reduced pressure backflow assembly). The Contractor shall furnish all
temporary connections therefor at its own cost. Unless stated otherwise in the Special Conditions, the Contractor shall not be charged for water provided by the Port of Houston Authority and utilized by the Contractor in accordance with the Standard of Care.

4.21 **Electrical Connections:**

The Contractor shall make its own arrangements and pay for electrical service at the Site unless otherwise stated in the Special Conditions.

4.22 **Contractor’s Obligation to Maintain a Clean Work Site:**

The Contractor shall at all times during the Contract Time maintain the Site and structures in such a manner that eliminates accumulations of waste materials, debris or rubbish. The Contractor shall perform daily clean-up of dirt, debris, scrap materials, and other disposable items outside the construction zone. At the end of each week, the Contractor shall remove from and about the Site waste materials, rubbish, and any of the Contractor’s tools, construction equipment, machinery and surplus Equipment and Materials that could cause a hazard. Prior to Final Completion of the Work or such sooner time as may be required by the Port of Houston Authority, the Contractor shall completely remove from the Site all waste matter, rubbish and debris as well as all unused materials, temporary facilities, tools and the like, leaving the area “broom clean.” Any Hazardous Substances must be disposed of in accordance with Section 3.13.

Littering or contributing to poor housekeeping, unsanitary or unsafe conditions or other disruptive procedures in the Port of Houston Authority’s facilities or on the Port of Houston Authority’s property is strictly prohibited. The Port of Houston Authority reserves the right to cease all Work that may be disruptive.

If Contractor fails to maintain the Site as required and fails to timely complete appropriate clean up and removal activities prior to Final Completion or within twenty-four (24) hours after the Port of Houston Authority’s direction to do so, the Port of Houston Authority shall have the right (but not the obligation) without further notice to the Contractor to perform such clean up and removal activities at Contractor’s expense and to offset, pursuant to Section 10.15, the amount so expended by the Port of Houston Authority against any amounts due the Contractor or its surety or recover such amount from either of them.

The Contractor shall ensure that trucks which have delivered Equipment and Materials to the Contractor, including without limitation concrete trucks, shall be cleaned either: (1) at a location within the Site designated by the Port Construction Representative, or (2) off the property of the Port of Houston Authority. At a time convenient to the Contractor but prior to Final Completion, any residue from such cleaning operations shall be completely removed from the property of the Port of Houston Authority.

4.23 **Quality Control:**

(a) The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Contractor shall employ such practices as are necessary to protect all completed and partially completed Work and all existing improvements located on the Site from loss and damage, including from subsequent operations of the Contractor or later to be performed Work, theft or damage by weather and, if necessary, shall provide suitable shelter therefore. Contractor shall correct at its own expense any damage or disfigurement to work or property (whether or not located on the Site) resulting from the fault, neglect or omission of Contractor, any Subcontractor, or any other person or entity for whom any of them is legally responsible.

(b) Contractor shall develop and implement a system and procedures for reviewing its own Work and the Work of its Subcontractors of every tier for defects and deficiencies, including the preparation of all appropriate quality control documentation, to assure that all such defects and deficiencies are discovered and corrected. Contractor shall submit its quality control plan to the Port of Houston Authority.
for review and comment. Such quality control plan shall set forth Contractor’s staffing plan for quality control, including the individual on Contractor’s staff in charge of quality control (which individual shall be subject to acceptance of the Port of Houston Authority), arrangements for independent testing and reporting, and such other information as required by the Contract Documents and the Port of Houston Authority.

4.24 Material Testing and Craftsmen Qualifications:

(a) The testing and inspection of Equipment and Materials as required by the Specifications, or as deemed advisable by the Port Construction Representative unless provided otherwise herein, shall be performed by a commercial laboratory hired by and paid directly by the Port of Houston Authority.

The Contractor shall cooperate with such laboratory to ensure that all required testing is accomplished without delay to or interference with the Work. The Contractor at its own expense shall provide such laboratory with all test specimens required by the Contract Documents. The Contractor shall provide the Construction Manager and Inspectors with at least 24 hours advance written notice of the time and place when all tests and inspections will be performed such that the Inspectors may arrange for such testing by such laboratory and, at their discretion, observe such tests and inspections. To the extent the costs payable by the Port of Houston Authority for testing or observation of testing increase because of actions or inactions of the Contractor, including any failure to comply with the Standard of Care or to complete the Work within the Contract Time, Contractor shall be liable for such increase. The Port of Houston Authority may recover such increase from Contractor or its surety, or offset it from amounts due to Contractor, or its surety, from the Port of Houston Authority.

Such laboratory shall perform tests required for concrete work, shall test earth fill material for compliance with the Specifications and for optimum moisture content, shall make density tests of compacted fill and shall perform any other material tests the Port Construction Representative directs. All certificates of such testing, inspection or approvals issued by such laboratory shall be delivered to the Inspector with a copy to the Contractor.

(b) The costs of laboratory services required to establish mix designs for Portland Cement concrete shall be borne by the Contractor. The Contractor shall pay for the costs of analyzing aggregates, fixing gradations, preparing and testing of design cylinders or specimens and other such services required to establish mix design, or to redesign any mix when required due to any change in source of materials or other conditions.

(c) The expense of tests necessary to qualify and craftsmen, including welders, shall be borne by the Contractor.

4.25 Observation of and Access to the Work; Inspections by the Port of Houston Authority; Test Cuts:

(a) The Contractor shall provide the Port of Houston Authority and any Design Consultant or other Port of Houston Authority consultant (and any governmental representatives who may lawfully request access to the Work) access to the Work in preparation and progress wherever located. All Equipment and Materials furnished and Work performed shall be subject to rigid inspection. The Port Construction Representative, Construction Manager and the Inspectors shall at all times have access to all parts of any facility where Equipment and Materials is being manufactured. The Port Construction Representative shall have full control of all matters concerning such inspections and its decision as to such matters shall be final.
(b) The Port of Houston Authority reserves the right to observe and inspect the Work at any time. The presence of the Port of Houston Authority, Design Consultant or any other consultant to the Port of Houston Authority at the Site or other Work location does not imply concurrence with, acceptance of or approval of the Work. The Contractor shall call specific items to the attention of the Port of Houston Authority if Contractor wishes to obtain the Port of Houston Authority’s opinion.

(c) Portions of the Work that are performed in stages must be inspected at each stage of such Work. If the Contractor proceeds with such Work without timely calling for an inspection at each such stage, the Contractor does so at its own risk and shall be responsible for all costs of every nature attributable thereto, including without limitation any costs associated with design professionals, and liable for all damages caused thereby. The Port of Houston Authority shall have the right, but not the obligation, to require the Contractor to break out or otherwise uncover any such Work for proper inspection. Repair or replacement of Work uncovered or broken out must be performed at the sole expense of the Contractor.

(d) Prior to Contractor covering any Work, Contractor must provide written notice sufficiently in advance thereof such that the Port of Houston Authority shall first have the opportunity (but not the obligation) to inspect such Work prior to such covering. Such notice shall not be less than 24 hours. Moreover, the Port Contract Representative has the right, when it deems necessary, to make test cuts at any place that the Port Contract Representative desires to determine the conformity of the Work, including without limitation any Equipment and Materials, workmanship or dimensions, with the Contract Documents. If the Work is found to comply with the Contract Documents, the Port of Houston Authority will bear all costs incurred by such test cut and test. If the Work is found not to comply with Contract Documents, the Contractor shall bear all cost incurred by such test cut and test and all cost necessary to bring the Work into compliance with the Contract Documents, including without limitation costs associated with design professionals and other consultants.

(e) The Contractor shall sign and acknowledge all Inspector reports.

(f) Whenever the Contractor is permitted to do work at night, on weekends, or on holidays, or is permitted to vary the period during which Work is normally conducted, the Contractor shall give the Port Construction Representative twenty-four (24) hours written notice prior to beginning such Work such that such Work may be observed and inspected. Contractor shall perform such Work without extra compensation to the Contractor and in compliance with regulations furnished in writing by the Port Construction Representative.

4.26 Intellectual Property Rights:

If the Contractor uses any design, Equipment and Materials, or process covered by Intellectual Property Rights, letters patent or copyright of any third party, the Contractor shall lawfully acquire the right to such use from the appropriate owner thereof. Pursuant to Sections 11.08 and 11.09, THE CONTRACTOR SHALL INDEMNIFY AND SAVE HARMLESS THE PORT OF HOUSTON AUTHORITY INDEMNITEES FROM ANY AND ALL CLAIMS OF INFRINGEMENT BROUGHT BY ANY THIRD PARTY BASED UPON, ARISING OUT OF OR RELATING TO ANY SUCH USE.

4.27 Contractor’s Key Personnel:

The names, addresses, home telephone numbers, and résumés of each key employee involved in the day-to-day or general management of the Project, including, but not limited to, the Field Supervisors (see definition below) and other project managers (Contractor’s “Key Employees”), shall be submitted to the Port of Houston Authority in writing prior to commencement of on-Site work. No Key Employee shall be changed during the Contract Time without prior written agreement of the Port Construction Representative. Contractor shall request such agreement by providing written notice of its desire to make
such change, which notice shall set forth the reason therefor and the name and qualifications of a proposed replacement.

The Contractor shall have at all times during which the Work is in progress a competent and reliable English-speaking representative on the Site (Contractor’s “Field Supervisor”). In the event Contractor is working multiple shifts, Contractor may utilize a separate Field Supervisor for each shift. In such an event, the Contractor shall notify the Port of Houston Authority in writing which Field Supervisor will be the Contractor’s representative primarily responsible for the Work. Each Field Supervisor shall be in the direct employ of the Contractor and shall be subject to the acceptance of the Port of Houston Authority. No Subcontractor shall perform any Work at the Site unless the designated Field Supervisor is present. The Contractor’s Field Supervisor(s) shall be authorized to receive notices given by the Port of Houston Authority, Port Construction Representative (or its representative), Design Consultant, or the Inspector. Notice given to any such Field Supervisor shall constitute notice to the Contractor.

The Port of Houston Authority shall have the right to require the Contractor to replace any Field Supervisor, if in the discretion of the Port Construction Representative the Field Supervisor is unsatisfactory. Contractor acknowledges and agrees that exercise of such right of the Port of Houston Authority to require the Contractor to replace a Field Supervisor shall not be the basis for any Claim, that Contractor will not assert or pursue and shall not have the right to assert or pursue any Claim based on the exercise of such right, and that exercise of such right shall not entitle Contractor to any relief or recovery, whether for additional compensation, additional time, damages or otherwise.

4.28 Contractor’s Field Office:

The Contractor shall provide a temporary field office building at the Site, at a location accepted by the Port Construction Representative, which building shall be the Contractor’s own jobsite headquarters, unless stated otherwise in the Special Conditions. Such building shall be weatherproof and equipped with adequate door and window locks for security of its contents. Such building shall also be equipped with adequate electrical power and illumination, heating facilities, telephone service and telefax service. Contractor shall maintain such building in a clean, sanitary and orderly condition throughout the Contract Time and shall immediately remove such building from the Site upon completion of the Work.

4.29 Field Office for Port of Houston Authority Personnel:

Unless stated otherwise in the Special Conditions, the Contractor shall not be required to furnish a field office for the exclusive use of Port of Houston Authority personnel. However, Port of Houston Authority personnel shall have the right to use the Contractor’s buildings and facilities at the Site as needed at no additional cost to the Port of Houston Authority.

4.30 Contractor’s Local Office:

The Contractor shall have an office or agent in the greater Houston area during the period of construction. The mailing address, telephone number and telefax number of this office must be on file with the Port Contract Representative prior to the start of any Work.

END OF GENERAL CONDITIONS SECTION 4
SECTION 5. SUBCONTRACTORS

5.01 Subcontractors and Material Suppliers:

(a) The Contractor shall not utilize any Subcontractor or Supplier other than those disclosed on the Subcontract Sheet submitted to the Port of Houston Authority as part of Contractor’s Bid/Proposal without prior written agreement by the Port of Houston Authority.

The Contractor shall not utilize any Subcontractor or Supplier of any tier to whom the Port of Houston Authority has objection. In the event the Port of Houston Authority objects to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Port of Houston Authority has no objection. If after issuance by the Port Authority of the Purchase Order, the Port of Houston Authority objects to a person or entity proposed in the Contractor’s Subcontractor sheet submitted to the Port of Houston Authority as part of Constructor’s Bid/Proposal and the Port of Houston Authority did not voice such objection prior to issuance of the Purchase Order, and if the proposed but rejected Subcontractor or Supplier was reasonably capable of performing the Work pursuant to the Contract Documents and the replacement Subcontractor will not perform the Work pursuant to the Contract Documents for the same or less dollar amount or will cause delay in the Work, the Contractor may assert a Claim for an adjustment of the Contract Price or Contract Time in accordance with Section 8. Assertion of a Claim for an adjustment of the Contract Price or Contract Time pursuant to Section 8 shall be Contractor’s sole and exclusive remedy for any increase in cost or time or damages associated with required replacement of a previously accepted Subcontractor. Any Claim for any other relief Contractor believes it is entitled to as a result of an objection by the Port of Houston Authority to a Subcontractor or Supplier shall also be asserted in accordance with Section 8.

(b) The Contractor shall be responsible to the Port of Houston Authority for acts and omissions of the Contractor’s employees, Subcontractors and Suppliers, and their agents and employees, and other persons performing portions of the Work.

(c) By an appropriate written agreement, the Contractor shall require each Subcontractor and Supplier, to the extent of the Work to be performed by such Subcontractor or Supplier, to be bound to the Contractor by the terms and conditions of the Contract Documents, and to assume toward the Contractor all of the liabilities, obligations and responsibilities that the Contractor, by the Contract Documents, assumes toward the Port of Houston Authority. Each subcontract agreement shall preserve and protect the rights of the Port of Houston Authority under the Contract Documents with respect to the Work to be performed by Subcontractors or Suppliers so that the subcontracting of such Work will not prejudice such rights. Upon request of the Port of Houston Authority, the Contractor shall provide the Port of Houston Authority with all subcontracts. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. Contractor shall require all Subcontractors to:

(i) carry appropriate insurance as required under the Contract Documents,

(ii) INDEMNIFY THE PORT OF HOUSTON AUTHORITY INDEMNITEES TO THE SAME EXTENT THAT THE CONTRACTOR IS REQUIRED TO INDEMNIFY THE PORT OF HOUSTON AUTHORITY UNDER THE CONTRACT DOCUMENTS,
(iii) make the same warranties for the applicable portion of the Work to the Port of Houston Authority as required by the Contractor under the Contract Documents,

(iv) assign all Intellectual Property Rights to the Port of Houston Authority to the same extent as required by Contractor under the Contract Documents, and

(v) agree to the dispute resolution procedures as set forth in the Contract Documents.

(d) Any specific requirement in this Contract that the responsibilities or obligations of Contractor also apply to a Subcontractor or a Subcontractor of any tier is added for emphasis and is hereby deemed to include all Subcontractors of the Contractor and apply to any other tier of Subcontractor. The omission of a reference to a Subcontractor or a Subcontractor of any tier in connection with any of Contractor’s responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor or a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

5.02 Port of Houston Authority as Third Party Beneficiary of Subcontracts:

Each subcontract entered into between Contractor and a Subcontractor or Supplier shall provide that the Port of Houston Authority is and shall be a third party beneficiary thereof. Notwithstanding any failure of Contractor to comply with the foregoing sentence, the Port of Houston Authority shall be and hereby is deemed to be a third party beneficiary of each such subcontract.

5.03 Port of Houston Authority and Surety as Assignees of Subcontracts:

(a) Each subcontract entered into between Contractor and a Subcontractor shall provide that, in the event of a termination of this Contract, such subcontract shall be assign able to the Port of Houston Authority and/or the Contractor’s surety without the need for any further action on the part of any party hereto or thereto. Notwithstanding any failure of Contractor to comply with the foregoing sentence, the Port of Houston Authority and the Contractor’s surety shall be and hereby are deemed to be permitted assignees with respect to any such subcontract. Upon assignment to the Port of Houston Authority under this Section 5.03(a), the Port of Houston Authority may further assign the subcontract to a successor contractor or other entity for completion of the Project.

(b) Contractor shall assign to Port of Houston Authority, from time to time as Port of Houston Authority may request, all guaranties, warranties, and indemnities extended by any Subcontractor or Supplier with respect to any Work, Equipment and Materials, or services performed or furnished by the issuing party and forming a part of the Work.

5.04 No Benefit of Subcontractor in Contract:

No Subcontractor shall have any beneficial interest in or be a third party beneficiary to any Port of Houston Authority contract (including without limitation this Contract).

5.05 Protection against Claims of Subcontractors, Laborers, and Suppliers:

Pursuant to Section 11.08, THE CONTRACTOR SHALL INDEMNIFY AND SAVE HARMLESS THE PORT OF HOUSTON AUTHORITY INDEMNITEES FROM ALL CLAIMS ARISING OUT OF RELATED TO OR CONNECTED WITH THE DEMANDS OF SUBCONTRACTORS, SUPPLIERS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT AND MATERIALS, POWER TOOLS AND ALL SUPPLIES INCURRED
IN THE PERFORMANCE OF THE CONTRACT. WHEN REQUESTED BY THE PORT OF HOUSTON AUTHORITY, THE CONTRACTOR SHALL FURNISH EVIDENCE SATISFACTORY TO THE PORT OF HOUSTON AUTHORITY THAT ANY OR ALL OBLIGATIONS OWING TO ANY OF THE FOREGOING HAVE BEEN PAID, DISCHARGED OR WAIVED.

END OF GENERAL CONDITIONS SECTION 5
SECTION 6. CONTRACT TIME AND COMPLETION

6.01 Commencement of Work:

Work shall be commenced by the Contractor only after a fully executed written Purchase Order has been issued by the Port of Houston Authority, only after the effective date of the insurance and bonds required by the Contract Documents, and only after receipt of a written notice to proceed (“Notice to Proceed”) from the Port Construction Representative setting forth the Start Work Date. In the event the Contractor begins performance of the Work prior to issuance of such a Purchase Order and Notice to Proceed, the Contractor proceeds at its own risk and shall bear all responsibility therefor and all costs attributable thereto, including without limitation all costs associated with design professionals and other consultants, and be liable for all damages caused thereby. The Contractor acknowledges that the Port of Houston Authority has no liability to or obligation to pay the Contractor for any Work performed in connection with the Project prior to the issuance of such a Purchase Order and Notice to Proceed.

6.02 Start Date for Field Work:

(a) Prior to commencement of any field operations, a preconstruction meeting will be held at a location and time to be determined by the Port of Houston Authority. Contractor and all major Subcontractors shall attend the meeting. The meeting agenda may include and Contractor shall be prepared to discuss: (1) review of Contract Documents; (2) designation of Contractor’s Field Supervisor and other management personnel and Port Authority’s Construction Manager; (3) review of insurance; (4) discussion of formats proposed by the Contractor for Schedule of Costs, Schedule of Submittals, Baseline Schedule and Progress Schedules; (5) procedures and processing of shop drawings and other Submittals, substitutions, pay estimates or applications for payment, Requests for Information, Request for Proposal, Change Orders, and Contract closeout; (6) scheduling of the Work and coordination with other contractors; (7) review of Subcontractors through tier three (3); (8) use of premises by the Port of Houston Authority and Contractor; (9) safety and first aid procedures; (10) construction controls provided by the Port of Houston Authority (if applicable); (11) temporary utilities; (12) survey and layout; (13) security and housekeeping procedures; (14) field office requirements; (15) procedures for testing; and (16) procedures for maintaining record documents.

(b) In most instances, the start date for field work will not be set out in the Bid/Proposal Request. In such a situation, after award of the Contract by the Commission and before the Purchase Order being issued, the parties shall agree on the start date for field work. If the parties cannot agree to such a date, the Port Contract Representative will determine the start date for field work. The Port Contract Representative’s decision shall be final and binding on the Contractor.

In instances in which the Bid/Proposal Request provide the start date for field work, that date shall be the start date for the field work.

(c) In no event, however, shall field work begin prior to receipt and delivery to the Port of Houston Authority of all permits required for start of construction, submission of all Submittals required prior to start of construction including Contractor’s Site health and safety plan and Contractor’s Spill Prevention Plan or Spill Prevention Control and Countermeasure Plan (as applicable), and insurance required by the Contract Documents.
6.03 Working Days:

Unless prior written consent is obtained from the Port Construction Representative as set forth below, the Contractor shall only perform the Work at the Site during Working Days. Contractor is not prohibited from performing work on days that are not Working Days; however, if Contractor wants or intends to work during times other than between 7:00 AM and 6:00 PM on a Working Day, then Contractor must submit to the Port Construction Representative a proposed schedule setting forth the days and hours during which it intends to work and obtain prior written consent from the Port Construction Representative to such schedule.

6.04 Baseline Schedule:

(a) Baseline Schedule: Within ten (10) Working Days after the Contractor has been notified of the award of Contract and before any field work begins, the Contractor shall furnish for review and acceptance by the Port Construction Representative five (5) copies of its proposed baseline schedule covering prosecution of the Work. The proposed baseline schedule shall be prepared on a Working Day basis unless the Port Construction Representative requests that it be prepared on a calendar day basis, in which case it shall be prepared on a calendar day basis. The proposed baseline schedule shall be prepared on the basis that the Project owns the float.

The Contractor shall provide the proposed baseline schedule in bar graph form as well as critical path form. The proposed baseline schedule shall be dated and, once accepted by the Port Construction Representative, designated as the baseline schedule (“Baseline Schedule”). In addition to a hard copy, the Contractor shall provide an electronic copy of the Baseline Schedule (and any Revised Baseline Schedules and Progress Schedules as such revisions and reports of progress are made from time to time) to the Port of Houston Authority in a software accepted by and in such manner requested by the Port of Houston Authority, including all resource loading and logic diagrams.

The Baseline Schedule shall state the sequence of operations and shall show start/finish dates for all critical and non-critical path construction activities, construction logic, activity sequence, and activity durations. The Baseline Schedule shall include all activities necessary for effective planning, procurement, construction, construction management and timely completion of the Work within the Contract Time and any applicable Milestones, including, but not limited to: start of construction, completion, permit dates, procurement dates, estimated dates that fabrication of items of Equipment and Materials or other Work will commence and be completed, dates for delivery thereof to the Site, Submittal dates, dates required for reviews and acceptances by the Port of Houston Authority for the Contractor to maintain the Baseline Schedule (which dates shall provide for a sufficient time for such review), and the dates for the Port of Houston Authority to supply Port of Houston Authority furnished Equipment and Materials, if any. Furthermore, the Baseline Schedule shall designate sources of supply of all Equipment and Materials and points of manufacture and fabrication of Equipment and Materials or other work to be manufactured or fabricated off Site.

Once accepted, no changes to the Baseline Schedule may be made without acceptance of such change by the Port Construction Representative. In the event Contractor believes a change in the Baseline Schedule is appropriate and such change would not impact the Contract Time, the Contractor shall submit to the Port Construction Representative a signed writing which sets forth the proposed changes and the reason for such changes and warrants that such changes or deviations are necessary. In the event the Contractor believes it is entitled to an extension of Time, the Contractor shall comply with the provisions of Section 8.11.
(b) **Revised Baseline Schedules**: Contractor shall issue revisions to the Baseline Schedules (and any subsequent Revised Baseline Schedule) to the Port of Houston Authority promptly after Change Orders or Construction Change Directives affecting the Contract Time have been finalized, but in no event later than ten (10) calendar days after the date that the relevant Change Orders or Construction Change Directives are finalized. In addition to a hard copy, the Contractor shall provide the Port of Houston Authority an electronic copy of each Revised Baseline Schedule in a software accepted by and in such manner requested by the Port of Houston Authority, including all resource loading and logic diagrams. Each revision shall be dated and, once accepted by the Port Construction Representative, identified as a “Revised Baseline Schedule” and shall bear the appropriate revision number. Each Revised Baseline Schedule shall clearly demonstrate all changes in resource loading and/or the planned start and finish dates for all critical and non-critical path numbered Work activities as compared to the most recent Baseline Schedule accepted by the Port Construction Representative. Contractor shall identify and explain any and all logic changes and restraints from the most recent Baseline Schedule (or Revised Baseline Schedule) accepted by the Port Construction Representative. Each Revised Baseline Schedule shall be prepared on the basis that the Project owns the float.

Revised Baseline Schedules are subject to the acceptance of the Port Construction Representative, and, once accepted, no changes may be made thereto without acceptance of the change by the Port Construction Representative. In the event Contractor believes a change in the Revised Progress Schedule is appropriate and such change would not impact the Contract Time, the Contractor shall submit to the Port Construction Representative a signed writing which sets forth the proposed changes and the reason for such changes and warrants that such changes or deviations are necessary. In the event the Contractor believes it is entitled to an extension of Time, the Contractor shall comply with the provisions of Section 8.11.

(c) No extension of the Contract Time and resulting modification to the Baseline Schedule or any Revised Baseline Schedule may occur without a Change Order or Construction Change Directive that modifies the Contract Time.

6.05 **Progress Schedules**:

(a) The Contractor shall provide the Port of Houston Authority with schedules accurately showing the actual progress of the Work as compared to the Baseline Schedule or latest accepted Revised Baseline Schedule, as appropriate, (each a “Progress Schedule”) (i) at the beginning of each month or more frequent basis as the Port of Houston Authority requests, and (ii) in between such periodic Progress Schedules if non-progress or slow progress is such as to render the previously submitted and accepted Baseline Schedule or Revised Baseline Schedule, as applicable, inaccurate. In addition to a hard copy, the Contractor shall provide the Port of Houston Authority an electronic copy of each Progress Schedule in a software accepted by and in such manner requested by the Port of Houston Authority, including all resource loading and logic diagrams. Such Progress Schedules shall: accurately reflect current conditions; identify and inform the Port of Houston Authority of all deviations in every numbered as-planned activity contained in the latest Baseline Schedule or Revised Baseline Schedule, as applicable, accepted by the Port Construction Representative; and explain the basis for such deviations as well as the Contractor’s plan to bring the schedule back into compliance with the latest Baseline Schedule or Revised Baseline Schedule, as applicable, accepted by the Port Construction Representative.
Each Progress Schedule shall be dated and identify the Baseline Schedule or Revised Baseline Schedule against which progress is shown. Each Progress Schedule shall clearly demonstrate all changes in resource loading and/or the planned start and finish dates for all critical and non-critical path numbered Work activities as compared to the most recent Baseline Schedule or Revised Baseline Schedule, as applicable, accepted by the Port Construction Representative. Contractor shall identify and explain any and all logic changes, original duration changes and restraints from the most recent Baseline Schedule or Revised Baseline Schedule, as applicable, accepted by the Port Construction Representative. Progress Schedules shall be prepared on a “retained logic” basis, as defined by the most recent Primavera Software Operating Manual.

The Progress Schedule shall include, at a minimum, four week look-ahead schedules, an overall construction schedule update, and the an accurate schedule reflecting progress for the entirety of the Work. Subcontractors and Suppliers shall be kept updated on all schedules changes.

Submission of a Progress Schedule shall be a representation by the Contractor that the information reflected in the Progress Schedule is accurate as of the date of submission.

(b) Review, acknowledgement or acceptance of a Progress Schedule shall not constitute acceptance or approval of any revisions to the Baseline Schedule or a Revised Baseline Schedule or a change in the Contract Time. Revisions to the Baseline Schedule and Revised Baseline Schedules shall only occur in compliance with Section 6.04. In the event the Contractor believes it is entitled to an extension of time, it must comply with Section 8.11. No extension of the Contract Time and resulting modification to the Baseline Schedule or any Revised Baseline Schedule may occur without a Change Order or Construction Change Directive that modifies the Contract Time.

6.06 Time of Completion:

(a) TIME IS OF THE ESSENCE OF THE CONTRACT. By executing the Contract, the Contractor confirms that the Contract Time is a reasonable period for performing and completing the Work. The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and satisfy any Milestones established for the Work.

(b) Contractor shall perform the Work in general accordance with the most recent Baseline Schedule or Revised Baseline Schedule accepted by the Port Construction Representative.

6.07 Lack of Satisfactory Progress:

If the Contractor receives notice from the Port of Houston Authority that the Port of Houston Authority is concerned with the rate of progress of the Work, the Contractor shall, whether or not it disagrees with the Port of Houston Authority’s concern or disputes responsibility for the delay, provide the Port Contract Representative with a written narrative setting forth in a degree of detail acceptable to the Port of Houston Authority a plan of recovery to overcome or mitigate the concern of the Port of Houston Authority or delay, including without limitation, a program describing the additional manpower, overtime, material expediting, re-sequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract with regard to the Contract Time. Moreover, if in the opinion of the Port Contract Representative the rate of progress of the Work is not satisfactory, is not rapid enough to ensure completion within the Contract Time, or the Contractor’s proposed recovery plan is inadequate to achieve such recovery, the Port Contract Representative shall have the right, but not the obligation, to order the Contractor to: (i) employ additional people; (ii) increase its plant; or (iii) prosecute the Work by working longer hours on any portion of the Work which is deemed by the Port Contract Representative to be behind schedule; and in each instance the Contractor shall forthwith comply with any such orders without additional compensation. Alternatively, the Port of Houston Authority may make good any such deficiencies, offset
the reasonable cost thereof, including, without limitation, the Port of Houston Authority’s expenses and compensation for any professional services (including without limitation any professional architectural or engineering design services and any attorneys’ fees) made necessary thereby, from any amount due the Contractor or its surety from the Port of Houston Authority. Contractor shall not be entitled to additional compensation (whether as an adjustment in the Contract Price, damages or otherwise) for the schedule recovery efforts. No acceptance, approval or consent by the Port of Houston Authority of any plan for re-sequencing or acceleration of the Work submitted by Contractor pursuant to this Section shall constitute a waiver by the Port of Houston Authority of any liquidated damages or other damages which the Port of Houston Authority may suffer by reason of such re-sequencing or the failure of Contractor to complete the Work by the Contract Time or any applicable Milestone or other requirements of the Contract with regard to the Contract Time.

If the Contractor fails to complete the Work within the Contract Time, the Contractor understands and acknowledges that the Port of Houston Authority may, nonetheless, begin or increase its operations at the Site. Contractor shall, in such instance, perform its remaining Work in such a manner so as not to interfere with such operations, as required in accordance with Section 4.04. Furthermore, Contractor acknowledges and agrees that the impact to Contractor of such operations shall not be the basis for any Claim, Contractor shall not assert or pursue and has no right to assert or pursue any Claim as a result of such operations, and such operations shall not entitle Contractor to any relief or recovery, whether for additional compensation, additional time, damages or otherwise.

6.08 Liquidated Damages for Delay:

The Contractor understands and agrees that if the Contractor fails to Substantially Complete its contractual obligation to the Port of Houston Authority within the Contract Time or by the applicable Milestone, the Port of Houston Authority will be damaged. Since damages to the Port of Houston Authority for failure of the Contractor to Substantially Complete the Work within the Contract Time, or applicable portion of the Work by the applicable Milestone, are anticipated at the inception of the Contract, the Contractor shall and hereby does waive any claims that such failure in fact did not damage the Port of Houston Authority and hereby agrees that the Port of Houston Authority’s rights to such damages are absolute.

If the Contract Documents provide for payment of liquidated damages, the Contractor understands and agrees that the exact amount of damages to the Port of Houston Authority as a result of failure of the Contractor to Substantially Complete the Work within the Contract Time, or applicable portion of the Work by the applicable Milestone, is and will be difficult to determine. The Port of Houston Authority and the Contractor recognize the delays, expense, and difficulties involved in proving in a legal or mediation proceeding the actual loss suffered by the Port of Houston Authority if the Work is not Substantially Completed within the Contract Time, or applicable portion of the Work by the applicable Milestone. Accordingly, instead of requiring any such proof, the Port of Houston Authority and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor (or its surety) shall pay the Port of Houston Authority, for each CALENDAR day (not Working Day) the Work or applicable portion thereof remains uncompleted past the Contract Time or by the applicable Milestone, as applicable, the sum set out in the Contract Documents as liquidated damages for the Project. The Contractor agrees that each such sum is a fair and reasonable estimate of the amount of damages the Port of Houston Authority will incur if the Work or applicable portion thereof is not completed within the Contract Time or by the applicable Milestone. The number of calendar days comprising the period of time over which liquidated damages accrue shall not be reduced for any reason, including without limitation, by (i) any period of time that Work is not performed by reason of a termination pursuant to Section 9.02, or (ii) in a case where the Contractor’s surety elects to complete the Contract, by the period of time it takes such surety to complete the Contract. The Contractor (and its surety) binds and obligates itself to pay such damages to the Port of Houston Authority on demand or, at its option, the Port of Houston Authority may withhold from the Contractor or its surety or offset such damages against any amounts due the Contractor or its surety under the Contract or
otherwise under Applicable Law. In case full payment for the Work shall have been made, the Port of Houston Authority shall have the right to recover from the Contractor and its surety the amount of such liquidated damages as determined under the Contract.

6.09 Actual Damages for Delay:

If the Contract Documents do not provide for any liquidated damages, or the space for designation of liquidated damages is left blank, or an amount of “0” or “none” (however expressed) is inserted in any space for designation of liquidated damages, Contractor acknowledges and agrees that, instead of liquidated damages, the Port of Houston Authority shall be entitled to actual damages for delay in the event the Contractor fails to Substantially Complete the Work by the Contract Time, or the applicable portion of the Work by any Milestone. Such actual damages are in lieu of and not in addition to liquidated damages. Such actual damages may be withheld from the Contractor or its surety or offset against any monies owed the Contractor or its surety by the Port of Houston Authority or the Port of Houston Authority may collect such damages from the Contractor and the surety on the Contractor’s performance and payment bonds.

6.10 Substantial Completion:

(a) 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 Contract Documents so that the Port of Houston Authority can occupy or utilize the entirety of the Work (or designated portion thereof) for its intended use and all required certificates of occupancy and other permits, approvals, licenses, and documents required to occupy the Project by all entities, agencies and Governmental Authorities having jurisdiction over the Project and/or the operation and occupancy of the Project, have been given so that the Project may operate for its intended purpose. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, designated instructions of Port of Houston Authority’s personnel in the operation of systems have been completed, and all final finishes within the Contract Documents are in place. In general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Port of Houston Authority can begin full operations on the date of Substantial Completion, and the completion of the Work by the Contractor would not materially interfere with or hamper the Port of Houston Authority’s normal business operation.

As a further condition to achieving Substantial Completion, when the Contractor considers that the Work, or a portion thereof which the Port of Houston Authority agrees to accept separately, is Substantially Complete, the Contractor shall prepare and submit to the Port of Houston Authority a comprehensive list of items to be completed or corrected prior to final payment and shall certify that the list of Items will be completed by the scheduled date for Final Completion. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor shall proceed promptly to complete and correct all items on the list. Unless a longer period of time is agreed to in a writing signed and issued by the Port Contract Representative, all items on the list shall be corrected and completed within thirty (30) days of Substantial Completion.

Upon receipt of the Contractor’s list, the Inspector will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Inspector discloses any item, whether or not included on the Contractor’s list, which is not sufficiently complete in accordance with the Contract Documents so that the Port of Houston Authority can occupy or utilize the Work or designated portion thereof for its intended use or prevents the other requirements for Substantial Completion from being met, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Inspector. In such case, the Contractor shall then submit a request for another inspection by the Inspector to determine Substantial Completion.
(b) When the Work or designated portion thereof is substantially complete in the opinion of the Inspector, the Contractor will prepare a Certificate of Substantial Completion in a form acceptable to the Port Contract Representative and for the Port Contract Representative’s acceptance, certifying that the Work is in accordance with Section 6.10(a), which, once accepted by the Port Contract Representative, shall establish the date of Substantial Completion, shall establish responsibilities of the Port of Houston Authority and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate.

The Certificate of Substantial Completion shall be submitted to the Inspector for acceptance, and, if accepted, then to the Port Contract Representative and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance the Contractor shall submit a proposed Estimate for Contract Payment in accordance with the Contract Documents for any unpaid sums associated with such Work or designated portion thereof, less retainage. In addition to retainage, such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents, and any other amounts that the Port of Houston Authority is entitled to withhold pursuant to the Contract Documents.

6.11 Partial Utilization by the Port of Houston Authority:

Acceptance or use by the Port of Houston Authority of any part of the Work which:

(a) has specifically been identified in the Contract Documents as constituting; or

(b) the Port of Houston Authority and the Contractor agree constitutes;

a separately functioning and usable part of the Work which part can be used by the Port of Houston Authority for its intended purpose without significantly interfering with the Contractor’s performance of the remainder of the Work, may occur prior to Substantial Completion. Such acceptance or usage shall not:

(i) constitute acceptance of Work not complying with the requirements of the Contract Documents;

(ii) begin the running of any warranties; or

(iii) be cause for any partial release of retainage;

unless and to the extent the Port Contract Representative agrees otherwise in writing expressly stating acceptance of specified work, the extent to which warranties begin to run, or the extent to which retainage will be released, as applicable.

The Contractor shall coordinate with the Port Authority the completion and clean-up of such portions of Work so as to meet the Port Authority’s needs. Additionally, the Contractor shall coordinate with the Port Authority access to such portions of the Work for correction of nonconforming Work to minimize disruption of the Port of Houston Authority's activities where the Port of Houston Authority is in partial utilization.
6.12 Final Completion:

(a) On Final Completion of the Contract, all portions of the Work must be carefully reviewed and inspected by the Contractor. The Contractor shall satisfy itself that every item of the Work is Finally Completed and all defects have been made good, and that all surplus materials, refuse, dirt and rubbish have been cleaned up and removed from the Site or properly disposed of, and that the entire Work is in a finished, satisfactory and neat condition, and ready in all respects for final acceptance by the Port of Houston Authority.

Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final proposed Estimate for Contract Payment and other documentation required by the Contract Documents for final payment, the Inspector will make such inspection. When the Inspector finds the Work acceptable under the Contract Documents and the Contract fully and properly performed (including without limitation completion of all punch list items and satisfaction of all other requirements for final payment, including without limitation delivery of all required documentation and, if the Port of Houston Authority chooses to conduct an audit, completion of an audit by the Port of Houston Authority’s auditors), the Contractor will issue a final proposed Estimate for Contract Payment for acceptance by the Port Contract Representative certifying that the Work has been completed in accordance with the terms and conditions of the Contract Documents, including all requirements for Substantial Completion under Section 6.10 and all requirements for final payment, and that the entire balance found to be due the Contractor and noted in the final proposed Estimate for Contract Payment is due and payable. For Projects with a Contract Price based on unit costs, the Port of Houston Authority shall determine the actual final quantities of the Work and give to the Contractor a copy of such final quantities at which time the Contractor shall revise its Schedule of Costs accordingly and resubmit such revised Schedule of Costs to the Port of Houston Authority with the Contractor’s final proposed Estimate for Contract Payment. The Contractor’s final proposed Estimate for Contract Payment will constitute a further representation that conditions listed in Section 6.12(b) as conditions precedent to the Contractor’s being entitled to final payment have been fulfilled.

(b) Neither final payment nor any remaining retained percentage shall become due and the Project shall not be finally complete until the Contractor submits to the Port Construction Representative and the Port Contract Representative accepts:

(i) final releases from each person (including all Subcontractors and Suppliers who performed work at or for, or provided or fabricated materials in connection with, the Work (including all subcontracts executed in connection therewith), other than from those persons whose claims are being contested by Contractor in good faith and for which Contractor has provided the Port of Houston Authority a bond or security in an amount acceptable to the Port of Houston Authority; provided, however, that IF A SUBCONTRACTOR, SUPPLIER OR OTHER PERSON OR ENTITY REFUSES TO FURNISH A RELEASE REQUIRED BY THE PORT OF HOUSTON AUTHORITY, THE CONTRACTOR MAY FURNISH A BOND SATISFACTORY TO THE PORT OF HOUSTON AUTHORITY TO INDEMNIFY THE PORT OF HOUSTON AUTHORITY AGAINST SUCH CLAIM. IF SUCH CLAIM REMAINS UNSATISFIED AFTER PAYMENTS ARE MADE, THE CONTRACTOR SHALL INDEMNIFY THE PORT OF HOUSTON AUTHORITY INDEMNITEES FOR ALL LOSS AND COST, INCLUDING REASONABLE ATTORNEYS’ FEES INCURRED AS A RESULT OF SUCH CLAIM;

(ii) an affidavit that payrolls, bills for Equipment and Materials, and other indebtedness connected with the Work for which the Port of Houston Authority might be responsible (less amounts withheld by the Port of Houston Authority) have been paid or otherwise satisfied;
(iii) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days’ prior written notice has been given to the Port of Houston Authority;

(iv) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;

(v) consent of surety to final payment;

(vi) if required by the Port of Houston Authority, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Port of Houston Authority;

(vii) a final, unconditional certificate of occupancy and all construction-related approvals, licenses, documents and requirements for the Project enabling it to be occupied and operated for its intended use;

(viii) certification that all of the requirements for Substantial Completion under Section 6.10 have been met and all Work, including all punch list items, has been fully and finally completed;

(ix) complete list of Subcontractors and principal Suppliers, including addresses, telephone numbers, and name of individuals to contact who are familiar with the Project (including the Contractor);

(x) six (6) copies of all operations and maintenance manuals, records, instructions and data;

(xi) six (6) copies of all written guarantees and warranties in the form prescribed by the Contract Documents;

(xii) as-built drawing and other documentation required by Section 4.12;

(xiii) Work Product in accordance with Section 2.05;

(xiv) Project record documents;

(xv) keys, access cards, and any other items for access to and security of the premises, as well as spare parts, overages, and maintenance materials;

(xvi) closeout Submittals as identified; and

(xvii) all other documentation required by the Contract Documents.

6.13 No Delay Damages:

Except to the extent expressly set forth in Section 6.15 for events of Force Majeure, the Contractor shall receive no financial compensation for delay, interference, disruption, or hindrance at any time in the commencement or progress of the Work for any reason and for any period of time: by any act, omission or neglect, intentional or otherwise, of the Port of Houston Authority, Design Consultant or any other consultant of the Port of Houston Authority, or of an employee of any of them, or of a separate contractor employed by the Port of Houston Authority; or by Changes ordered in the Work; or by fire, unavoidable casualties or other causes beyond the Contractor’s control; or by delay authorized by the Port of Houston Authority
pending mediation; or by other causes that the Port Contract Representative determines may justify delay. To the fullest extent allowed by Applicable Law, except to the extent set forth in Section 6.15 for events of Force Majeure, in no event shall the Port of Houston Authority be liable to the Contractor or any Subcontractor or Supplier, any other person or any surety for or any employee or agent of any of them, for any damages arising out of or associated with any delay, interference, disruption, or hindrance to the Work, regardless of the source of the delay, interference, disruption, or hindrance. THE FOREGOING PORTIONS OF THIS PARAGRAPH SHALL APPLY EVEN IF SUCH DELAY, HINDRANCE, DISRUPTION OR INTERFERENCE RESULTS FROM, ARISERA OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE OR OTHER TORTIOUS CONDUCT, BAD FAITH, ARBITRARY OR CAPRICIOUS CONDUCT, INEQUITABLE CONDUCT, BREACH OF CONTRACT OR OTHER FAULT. HOWEVER CHARACTERIZED, OR STRICT LIABILITY WITHOUT REGARD TO FAULT, OF THE PORT OF HOUSTON AUTHORITY OR THE EMPLOYEES OR AGENTS OF THE PORT OF HOUSTON AUTHORITY. Except to the extent expressly set forth in Section 6.15 for events of Force Majeure, the Contractor’s sole remedy in any such case shall be an extension of time. Claims for extensions of time shall be made in accordance with Section 8.11.

6.14 Right of Port of Houston Authority to Accelerate Work and Reschedule Work:

(a) In the event the Port of Houston Authority desires to accelerate the Work from the latest accepted Baseline Schedule or Revised Baseline Schedule, as applicable, for reasons other than delays caused by or attributable to the Contractor, changed conditions, Changes, or other events addressed separately by the Contract Documents, the Port Contract Representative shall so notify the Contractor by request for Change Proposal. Contractor shall respond to such request for Change Proposal in accordance with Section 8.04, including providing the Port Contract Representative with Contractor’s plan to achieve such acceleration and all cost impacts, if any, from such acceleration. Before proceeding with any such Port of Houston Authority-directed acceleration plan under this Section, the Contractor shall have received the Port of Houston Authority’s prior written acceptance of the Contractor’s plan to implement the acceleration in the form of a Construction Change Directive or, in the event such plan includes an increase in cost, a Change Order. Upon receipt of such Construction Change Directive or Change Order, Contractor shall require its personnel and its Subcontractors and Suppliers to work such overtime hours and/or to increase their respective work forces as may be reasonably necessary to meet the Port of Houston Authority’s acceleration goals.

(b) In the event the Port of Houston Authority desires to reschedule portions of the Work from the latest accepted Baseline Schedule or Revised Baseline Schedule, as applicable, for reasons other than delays or events caused by or attributable to the Contractor, changed conditions, Changes, or other events addressed separately by the Contract Documents, the Port Contract Representative shall so notify the Contractor by Construction Change Directive. Contractor shall respond to such Construction Change Directive in accordance with Section 8.03.

6.15 Events of Force Majeure:

(a) Event of Force Majeure. Subject to Section 6.15(c), an event of “Force Majeure” shall mean any circumstance described in Section 6.15(b), but only if and to the extent that:

(i) such circumstance cannot reasonably be, or reasonably be caused to be, prevented, avoided or removed by the impacted Party;

(ii) such event materially adversely affects the ability of such Party to perform its obligations under this Contract;
such event is not the result of any failure of such Party to perform any of its obligations under this Contract or is otherwise caused by the Party claiming force majeure or its Subcontractors or Suppliers of any tier; and

such Party has given the other Party notice within five (5) Working Days from the occurrence thereof, describing such event, the expected duration thereof, the effect thereof and the actions being taken in order to comply with this Section 6.15.

(b) Events of Force Majeure. Subject to Sections 6.15(a) and 6.15(c), events of Force Majeure shall mean:

(i) acts of war or the public enemy;

(ii) epidemic, civil disturbances, insurrection, rebellion, sabotage, terrorism, riots or violent demonstrations;

(iii) earthquakes, hurricanes, tornadoes, and floods;

(iv) fire or explosion;

(v) evacuations of the Site ordered by Governmental Authority; and

(vi) judicial restraint.

Events not specifically listed herein shall not constitute events of Force Majeure, including, but not limited to, material or equipment shortages, market fluctuations and labor shortages, slow downs, strikes or other material, equipment or labor disturbances. Furthermore, weather which is not abnormal, even if such weather could not be reasonably anticipated and even if such weather prevents the performance of the Work, shall not be an event of Force Majeure.

(c) Certain Delays not Excused. Notwithstanding that an event of Force Majeure otherwise exists, the following provisions of this Section 6.15(c) shall not excuse and such shall not be considered an event of Force Majeure:

(i) Subcontractor or Supplier non-performance or late performance;

(ii) non-payment of taxes by Contractor or any Subcontractor or Supplier;

(iii) customs procedures;

(iv) delay of Contractor in obtaining, or failure to obtain or maintain, approval of any Government Authority;

(v) non-compliance with Applicable Law by Contractor or its Subcontractors or Suppliers;

(vi) late delivery of Equipment and Materials by Contractor, its Subcontractors or Suppliers;

(vii) mechanical or electrical breakdown or failure of Equipment and Materials, machinery or plant owned or operated by Contractor or any Subcontractor or Supplier; or
(viii) failure of Contractor to perform any of its obligations under this Contract in accordance with the requirements hereof prior to the occurrence of an event of Force Majeure.

(d) Effect of Force Majeure. Neither Party shall be considered to be in default or in breach of its obligations under this Contract if and to the extent that its failure of, or delay in, performance is due to an event of Force Majeure; provided, that:

(i) no obligations of the affected Party which arose before the occurrence causing the suspension of performance that remain unaffected by the Force Majeure are excused as a result of the occurrence;

(ii) the affected Party uses reasonable efforts to overcome or mitigate the effects of such occurrence; and

(iii) when the affected Party is able to resume performance of its obligations under this Contract, such Party shall give the other Party written notice to that effect and shall promptly resume performance hereunder.

The additional delay and, subject to Section 6.15(g), costs incurred by or damages to Contractor as a result of any event of Force Majeure shall be subject to the procedures set forth in Section 8 regarding extensions of time and additional costs. Failure to comply with the requirements of Section 8 shall be deemed a waiver of any Claim for an extension of time, additional costs, damages or other relief due to an event of Force Majeure.

(e) Mitigation. The Parties shall:

(i) make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any event of Force Majeure by among other things, recourse to alternate acceptable sources of services, Equipment and Materials; and

(ii) use their best efforts to ensure resumption of normal performance of this Contract to the maximum extent practicable after the termination of any event of Force Majeure and shall perform their obligations hereunder to the extent practicable and agreed between the Parties.

(f) Port of Houston Authority Self-Help. If within a reasonable time after an event of Force Majeure has occurred that has caused Contractor to suspend or delay performance of the Work, reasonable action that Contractor could initiate to remove or relieve either the Force Majeure or its direct or indirect effects has been identified and recommended to Contractor by Port of Houston Authority, and Contractor has failed to take such action, then the Port of Houston Authority may, in its sole discretion and after notice to Contractor, at Contractor’s expense, initiate such reasonable measures as will be designed to remove or relieve such Force Majeure or its direct or indirect effects, and thereafter require Contractor to resume full or partial performance of the Work in accordance with the provisions of this Contract. The costs of any such action taken by the Port of Houston Authority shall be reimbursed by Contractor (or its surety) to the Port of Houston Authority and the Port of Houston Authority may offset any such costs in whole or in part against any amount due or thereafter becoming due to Contractor or its surety.

(g) Increased Costs and Damages for Events of Force Majeure. Contractor shall assert any Claim for damages and increased costs arising out of an event of Force Majeure in accordance with Section 8.06. Such damages and increased costs due to delay shall be limited to the actual increase in cost to the Contractor solely as a result of delay arising out of an event of Force Majeure of (i) any Site office for the Contractor, and (ii) maintaining Contractor’s salaried personnel at the Site or on the Project, in each
instance, for the period of such delay. Contractor shall not be entitled to any damages or increased costs to the extent encompassed by any insurance maintained by Contractor or maintained by others in connection with the Project or the Work.

END OF GENERAL CONDITIONS SECTION 6
SECTION 7.  CORRECTION OF WORK

7.01  Substandard Material, Equipment, or Workmanship:

All Work shall be subject to the acceptance of the Port Contract Representative who shall have the right to condemn any part thereof that is not strictly in compliance with the Contract Documents. The Port Contract Representative shall have the right to order the removal of any Equipment and Materials which in its judgment is not fit to be used in the Work. Immediately upon the rejection by the Port Contract Representative of any Equipment and Materials or Work from the Site, and shall proceed to dismantle the Work rejected, and, solely at its own expense, replace such Work with Equipment and Materials and workmanship of the quality and character required by the Contract Documents. If however, any defective Equipment and Materials or workmanship is incorporated into construction, which defect in itself is not of such a nature as to require removal or reconstruction, the Port Contract Representative shall have the right, in its sole discretion, to elect to accept such Equipment and Materials or workmanship and to determine the reduction in value as is commensurate with the reduction in quality or in workmanship. Pursuant to Section 10.15, the Port of Houston Authority shall have the right to offset the amount of such reduction against amounts owing to the Contractor or its surety or to recover such amount from either of them.

7.02  Port of Houston Authority’s Right to Carry Out the Work:

If, during the course of the Work, the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from the Port of Houston Authority to commence and continue correction of such default or neglect with diligence and promptness, the Port of Houston Authority may, without prejudice to other remedies the Port of Houston Authority may have, correct such deficiencies; provided, however, that the Port of Houston Authority shall be entitled to take remedial and other necessary action in any emergency without waiting until the expiration of such seven (7) day period. In either case, the Port of Houston Authority may offset from payments then or thereafter due the Contractor (or its surety) the cost of correcting such deficiencies, including the Port of Houston Authority’s expenses and compensation for any Design Consultant’s additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor (or its surety) are not sufficient to cover such amounts, the Contractor (or its surety) shall pay the difference to the Port of Houston Authority.

7.03  Port of Houston Authority’s Right to Stop the Work:

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Sections 7.01 or 7.02 or fails to carry out Work in accordance with the Contract Documents, the Port of Houston Authority may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Port of Houston Authority to stop the Work shall not give rise to a duty on the part of the Port of Houston Authority to exercise this right for the benefit of the Contractor or any other person or entity.

7.04  Discovery and Correction of Latent Defective Work:

(a)  Correction During Performance of the Work:

Defective or nonconforming Work, including any portion of the Work which does not satisfy Section 7.05, shall be rebuilt or properly repaired or replaced at the Contractor’s sole cost whenever discovered, such that it satisfies the Contract Documents, including Section 7.05.
(b) Obligation to Repair After Substantial Completion:

Notwithstanding any provision in the Contract Documents to the contrary, for a minimum of one year after Substantial Completion the Contractor shall, upon receiving notice from the Port of Houston Authority, be obligated to replace or correct, without cost to the Port of Houston Authority, any Work which is improperly performed, defective, in breach of the warranties set forth in Section 7.05(a) or otherwise not in full compliance with the Contract Documents such that after such re-performance such Work or portion thereof satisfies the Standard of Care, warranties and Contract Documents.

This Section 7.04(b) shall not be construed to limit any other obligations of Contractor pursuant to this Contract, which obligations by their terms are intended to be binding for periods of time longer than those of the periods set forth in this Section 7.04(b). For the avoidance of doubt the period set forth in this Section relates only to the specific obligation of the Contractor to replace or correct the Work and has no relationship to the time period during which the Contractor shall be obligated to comply with or be liable for breach of its other obligations, warranties and covenants set forth in the Contract Documents. The Contractor agrees that the Port of Houston Authority may seek to enforce this Contract or establish Contractor’s liability with respect thereto for as long as permitted Applicable Law or such longer time period set forth in this Contract.

(c) Watertight Repairs:

In addition to Contractor’s obligations set forth above and elsewhere in the Contract Documents, Contractor shall repair, at no cost to Port of Houston Authority, for a period of twelve (12) months after Substantial Completion, any building(s) that is not watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by abnormal external forces beyond Contractor’s control or due to design errors of the Port of Houston Authority. Contractor shall, immediately upon notification by Port of Houston Authority of water penetration, determine the source of water penetration and, at its own expense, do any work necessary to make the building(s) watertight. Contractor shall also, at its own expense, repair or replace any other damaged material, finishes, and furnishings, damaged as a result of this water penetration, to return the building(s) to its (their) original condition.

(d) Responsibility for Cost and Port of Houston Authority Right to Correct:

When performing repair, replacement or correction pursuant to this Section 7.04, Contractor shall also make good all damage to other work caused by such repair, replacement or correction. The Contractor shall bear and be responsible for all costs of every nature incurred by the Contractor or the Port of Houston Authority in connection with such discovery, repair, replacement or correction, including without limitation costs associated with design professionals and other consultants, and shall be liable for all damages caused by the defective or nonconforming Work. If the Contractor fails to repair, replace or correct such Work, or is incapable of performing such repairs, replacements or corrections, or is incapable of performing such repairs, replacements or corrections in time to meet any requirements of the Port of Houston Authority, the Port of Houston Authority may, but is not obligated to, replace, repair or correct the Work itself or with a third party, and the Contractor or its surety shall reimburse the Port of Houston Authority for the expense of such repair, replacement or correction, including without limitation all costs associated with design professionals and other consultants, along with any other damages to the Port of Houston Authority resulting from such improper Work, or the Port of Houston Authority may offset such expenses and damages from any amount due the Contractor or its surety.
7.05  **Warranties:**

(a)  **General Warranty:**

The Contractor covenants, represents and warrants that it will perform the Work in accordance with its Standard of Care. The Contractor covenants, represents and warrants to the Port of Houston Authority that all items of the Work: (a) are merchantable, safe, and fit for their intended purpose; (b) are new and of good quality, and free from all defects in workmanship and materials; and (c) conform to all accepted Submittals and all requirements and provisions of the Contract Documents. Work not conforming to these requirements, including substitutions not properly accepted and authorized, shall be considered defective. If required by the Port Contract Representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of Equipment and Materials. Contractor’s express warranties contained herein are not limited by the provisions of Section 7.02, 7.03 or 7.04 and shall be in addition to any other warranties and obligations of Contractor, and any other claims, rights, actions or remedies that the Port of Houston Authority may have, in the Contract Documents, at law or in equity.

(b)  **Subcontractor Warranties:**

In addition to the warranties required pursuant to Section 7.05(a), Contractor shall obtain from its applicable Subcontractors and Suppliers any warranties and guarantees which are specified by the Contract Documents to extend for more than one (1) year following Substantial Completion. Contractor shall assign such extended warranties and guarantees directly to the Port of Houston Authority upon Final Completion.

Contractor shall obtain from all other Subcontractors and Suppliers warranties with coverage at least as broad as that required of Contractor under the Contract Documents for a period of one (1) year following Substantial Completion. During such one (1) year warranty period, Contractor shall enforce the Subcontractors’ and Suppliers’ warranties for the benefit of the Port of Houston Authority or its assigns. After expiration of such one (1) year period, the Contractor shall continue to aid the Port of Houston Authority in enforcing any continuing warranties assigned to the Port of Houston Authority, but such assistance shall be at the Port of Houston Authority’s expense.

If extended warranties in addition to those required by the Contract Documents are available from Subcontractors or Suppliers, Contractor shall advise the Port of Houston Authority of such availability and the cost thereof and, if requested by Change Order, shall purchase the extended warranty for the Port of Houston Authority Authority’s benefit, in which event the Change Order shall reflect an increase in the Contract Price equal to the cost of the extended warranty submitted to and accepted by the Port of Houston Authority.

The Contractor shall supply the Port of Houston Authority with original copies of all warranties made to the Contractor by Suppliers or Subcontractors. All guarantees and warranties of Equipment and Materials and services furnished to Contractor or Subcontractors by any Subcontractor or Supplier shall be assignable to and shall be deemed to run for the benefit of the Port of Houston Authority. Contractor hereby assigns to the Port of Houston Authority the benefits of all guarantees and warranties of all Subcontractors and Suppliers engaged for the Project, but such assignment shall not relieve Contractor of its warranty obligations to the Port of Houston Authority under the Contract Documents or Applicable Laws. If the Contractor is prevented for any reason from making any such assignment, the Contractor hereby consents to the Port of Houston Authority’s enforcing any and all such no assignable warranties in the Contractor’s name and the Contractor agrees that the Port of Houston Authority shall be entitled to any benefits derived therefrom without the need for any further action on the part of either the Contractor or the Port of Houston Authority. The Contractor further agrees to perform the Work in such a manner so as to preserve any and all such guarantees and warranties.
(c) **Miscellaneous:**

Additional warranties for specific items may also be required by the Specifications. The Contractor shall submit such warranties to the Port of Houston Authority for its acceptance before final payment will be made to the Contractor. Such warranties shall be assigned to the Port of Houston Authority.

Contractor shall not intentionally waive or take any action to prejudice or void any warranties as to Equipment and Materials or component parts used in the Work or as to any Subcontractor’s work without The Port Contract Representative’s prior written consent.

**END OF GENERAL CONDITIONS SECTION 7**
SECTION 8.  CHANGES, CLAIMS AND DISPUTES

8.01 Authority to Change and Resolve Claims:

The only person in the Port of Houston Authority Engineering Department with authority to resolve engineering/technical questions, problems or Claims, agree to Changes, and to resolve engineering/technical disputes involving the Contract or Bid/Proposal where the Port of Houston Authority is specifically given such authority in this Contract, is the Port Contract Representative. No other employee of the Port of Houston Authority Engineering Department has such authority. Any such resolutions must be in writing and signed by the Port Contract Representative. Any Claim by the Contractor that any terms or conditions of the Contract Documents have been Changed or waived must be evidenced by an agreement in writing accepted and signed by the Port Contract Representative.

Neither the Inspectors nor any Design Consultant or other consultant of the Port of Houston Authority have any authority to Change, expressly or impliedly, any of the terms and conditions of the Contract or to resolve questions, problems, Claims, or disputes involving the Contract or Bid/Proposal.

Notwithstanding the foregoing, the Contractor is hereby advised that approval by the Commission is required for certain matters.

8.02 Changes:

(a) The Port Contract Representative reserves the right to make such Changes within the general scope of the Work as the Port Contract Representative may deem necessary or appropriate and without notice to the surety.

(b) The Contractor shall not proceed with Changes without a written Construction Change Directive or fully executed Change Order from the Port Contract Representative. Such Construction Change Directives or Change Orders shall stipulate the Change and any Change in the Work to be performed as a result of such Change, any difference in time allowance and, with respect to Change Orders, any difference in Contract Price, whether such price is increased or decreased pursuant thereto. The Contractor shall under no circumstances have the right to Change the Work to be performed under this Contract, nor shall any Claim for additional compensation (whether asserted as an adjustment to the Contract Price, damages, or otherwise), extension of time or other relief in connection with any assertion of extra or additional work by the Contractor be allowed or entertained, unless such Change shall have been ordered as part of a Change Order or Construction Change Directive. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of change, modification, adjustment, revision, addition to, deletion from or alteration to the Work, and no Claim that the Port of Houston Authority has been unjustly enriched by any modification, adjustment, revision, addition to, deletion from or alteration to the Work, whether or not there is, in fact, any unjust enrichment to the Port of Houston Authority, shall be the basis of any Claim to any increase in any amounts due (whether asserted as an adjustment to the Contract Price, damages, or otherwise) in any time period provided for in the Contract Documents. Changes in the Work may be made without notice to Contractor’s sureties and absence of such notice shall not relieve such sureties of any of their obligations to Port of Houston Authority.

(c) The Contractor shall not be entitled to additional compensation (whether in the form of an adjustment to the Contract Price, damages, or otherwise) unless the cost of the Work is directly and materially impacted by the Change in the Work. Methods used in determining the amount of additional compensation (whether in the form of an adjustment to the Contract Price, damages, or otherwise) may include those listed in Section 8.07. The Contractor shall not be entitled to relief from the requirement to complete the Work within the Contract Time or to an increase in the Contract Time unless the additional time is established pursuant to Section 8.11.
(d) Agreement on any Construction Change Directive and on any Change Order shall constitute a final settlement of all matters relating to and relief to the Contractor as a result of the Change which is the subject of the Construction Change Directive or Change Order, including but not limited to, all direct and indirect costs associated with such Change and any right of the Contractor to any additional compensation as a result of such Change (whether in the form of an adjustment to the Contract Price, damages, or otherwise) and any and all adjustments to the Contract Time and the latest accepted Baseline Schedule or Revised Baseline Schedule, as applicable. Accordingly, Contractor hereby waives any Claim it may have to additional compensation and adjustments in the Contract Time arising out of the cumulative effect of any and all Changes, whether characterized by Contractor as adjustments, damages or other relief and regardless of the legal or equitable theory on which they are based. In the event a Change Order increases the Contract Price, Contractor shall include the Work covered by such Change Orders in its proposed Estimates for Contract Payment as if such Work were originally part of the Contract Documents.

8.03 Construction Change Directive:

Upon receipt of a Construction Change Directive, the Contractor shall, within the time limits set forth in Section 8.05, notify the Port Construction Representative in writing, with a copy to the Port Contract Representative, if it believes the Construction Change Directive merits an extension of the Contract Time different from what was provided for in the Construction Change Directive, if any, or an adjustment in the Contract Price, or otherwise entitles the Contractor to some form of relief. In such an event, Contractor shall comply with the procedures set forth in Sections 8.05 through 8.11 governing Contractor’s Claims. If the Contractor does not make its objection in writing to the Port Construction Representative, with a copy to the Port Contract Representative, within such period, it shall be conclusively presumed that:

(i) the Change described in the Construction Change Directive does not call for any Work that will result in an increase in the Contract Price, additional compensation, damages or other relief; and

(ii) the Contractor agrees with any adjustment to the Contract Time and any Change to provisions of the Contract Documents set forth in the Construction Change Directive; and

the Contractor shall perform the Work in accordance with the Construction Change Directive and shall not be entitled to any adjustment in the Contract Time or other Contract provisions other than set forth in the Construction Change Directive or to additional compensation, an adjustment in the Contract Price, damages or other relief. In such an event, the Contractor will be deemed to have waived its right to any increase in the Contract Time (other than that set forth in the Construction Change Directive) or to additional compensation, an adjustment in Contract Price, damages or other relief arising out of the Construction Change Directive.

A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment to the Contract Time and lack of a right to compensation, adjustment to the Contract Price, damages or other relief. Such agreement shall be effective immediately and shall be recorded as a Change Order.

8.04 Proposal Request:

The Port Construction Representative may request that the Contractor provide a proposal for a Change (“Change Proposal”). Within five (5) days following receipt of a request, Contractor shall submit a Change Proposal to Port Construction Representative together with the revised or new documents which, if accepted, will become part of the Contract Documents setting forth any requested adjustment in the Contract Price or the Contract Time or other Contract provision, and including an itemization of all costs of material and labor with extensions listing quantities and total cost, and a substantiation of any Claim for an extension of the Contract Time or Contract Price in accordance with Section 8. Such Change Proposal
shall be submitted in writing on Contractor's letterhead and manually signed by Contractor. If no Change Proposal is submitted by Contractor within such period, it shall be conclusively presumed that the Change described in the request does not call for any Work that will result in an increase in cost or time, otherwise modify the provisions of the Contract Documents, or entitle the Contractor to damages or other relief and such Change shall be performed by Contractor without any such increase, modification, right to recovery of costs or damages or other relief, the Contractor having waived any right it might have to an increase, modification, damages or other relief. If Contractor is unable to submit the above information within the time limit, it shall notify the Port Construction Representative in writing, setting forth the Port Construction Representative’s acceptance a date by which Contractor will submit the information as well as a schedule for the performance of the Work for which a Change Proposal will be forthcoming.

If the Port Construction Representative accepts a Change Proposal submitted by Contractor, the Port Construction Representative will recommend that the Port Contract Representative issue a Construction Change Directive or, if the Change Proposal includes an adjustment to the Contract Price or other provision of the Contract Documents, that the Port Contract Representative recommend to the Commission an adjustment in the Contract Price and modification of other Contract provisions through a Change Order.

Nothing contained herein shall limit the right of the Port Contract Representative to order Changes in Work by Construction Change Directives and Contractor shall promptly perform all Work required under the Contract Documents or a Construction Change Directive despite its refusal to accept or execute a Change Order.

8.05 Contractor's Claims:

(a) Contractor acknowledges and agrees that performance of the Work and completion of the Project require regular communication between the Contractor and the Port of Houston Authority and that such communications occur in a variety of forms. Contractor further acknowledges and agrees that (i) communications from the Port of Houston Authority will occur through Inspectors, consultants, the Port Contract Representative and other Port of Houston Authority personnel, (ii) there are limitations on the authority of all such individuals, (iii) it is possible that such an individual and the Contractor may view events differently, have conflicting positions on an issue, or disagree on interpretation of the Contract Documents, and (iv) the fact of a communication by any such individual evidencing a view, position, or interpretation different from or conflicting with that of the Contractor is not a breach of Contract or an act that, in and of itself, subjects the Port of Houston Authority to liability or entitles Contractor to any relief or recovery. Rather, Contractor agrees that it will communicate any such difference in view, position or interpretation and any belief of a right to relief (whether in the form of modification or adjustment to the Contract provisions, damages, or otherwise) as a result of such communications and any other Claims pursuant to the procedures set forth in this Section 8. Contractor acknowledges and agrees that the Port of Houston Authority is relying on Contractor to raise with the Port of Houston Authority any Claims that the Contractor has or believes it has in accordance with this Section 8 so that the fact of the Claim, investigation and understanding of the underlying communications, occurrences and events giving rise to the Claim, and resolution of the Claim (including, if appropriate, reversal or modification of a prior communication, issuance of a Construction Change Directive, or agreement upon a Change Order), can occur at a point in time that will eliminate or reduce any additional costs, increase in time for performance, damages to and liabilities of the parties.

(b) Contractor’s Claims must be initiated by written notice to the Port Construction Representative with a copy to the Port Contract Representative. The responsibility to substantiate Claims shall rest with the Contractor.

Claims by the Contractor must be initiated within five (5) days after occurrence of the communication or other event giving rise to such Claim or within five (5) days after the Contractor first
recognizes the condition giving rise to the Claim, whichever is later, or such shorter time, if any, for a particular type of Claim as is set forth in the Contract Documents. Any Claim not timely initiated by Contractor shall be deemed waived by Contractor and Contractor shall not be entitled to any relief based upon such Claim, whether in the form of an adjustment to a Contract provision, damages, or otherwise.

Pending final resolution of a Claim except as otherwise agreed in writing or in the event of termination pursuant to Section 9, the Contractor shall proceed diligently with performance of the Contract, and the Port of Houston Authority shall continue to make payments in accordance with the Contract Documents to the extent such payments are not in dispute or the Port of Houston Authority is not entitled to withhold payment.

(c) Contractor shall develop and implement a system and procedures for preparing, reviewing and processing Changes and Claims which fully complies with Section 8 and assures that the preparation of Change Proposals and responses to Construction Change Directives pursuant to Section 8.03 and requests for Change Proposals pursuant to Section 8.04 shall always include the simultaneous submittal of: (a) a comprehensive narrative explaining the reasons for any requested Changes; (b) the identification of all supporting documents being used to verify any requested cost, time or other Contract Document changes; and (c) a detailed narrative evaluation of critical path schedule impacts, if any.

(d) Contractor shall develop and implement a system and procedures for: (i) evaluating all Change Proposals and Claims submitted by Subcontractors and Suppliers of every tier for compliance with the requirements of the Contract Documents; (ii) recommending resolutions and options to the Port of Houston Authority in writing with respect to such Change Proposals and Claims; and (iii) implementing written Construction Change Directives and Change Orders accepted by the Port of Houston Authority in writing.

8.06  Claims for Additional Compensation:

(a) If the Contractor believes additional cost of the Work is involved or that the Contractor is entitled to additional compensation (whether in the form of an adjustment to the Contract Price, damages or otherwise) in connection with the Work for reasons including but not limited to (i) a written response, instruction or interpretation from the Port of Houston Authority, Design Consultant or other consultant, if any, (ii) an order by the Port of Houston Authority to stop the Work where the Contractor was not at fault, (iii) a written order for a minor Change in the Work issued by the Port of Houston Authority, Design Consultant or other consultant, if any, (iv) issuance of a Construction Change Directive, (v) termination of the Contract by the Port of Houston Authority, (vi) suspension of the Work by the Port of Houston Authority, (vii) event of Force Majeure, or (viii) any other communications, events, occurrence or grounds, a Claim shall be filed in accordance with Section 8.05. Contractor shall not be entitled to additional compensation (whether in the form of an adjustment to the Contract Price, damages or otherwise) in circumstances where another provision of the Contract Documents precludes it.

(b) If the Contractor wishes to make a Claim for additional compensation (whether in the form of an adjustment to the Contract Price, damages or otherwise), written notice as provided in Section 8.05 shall be given no later than the time specified in Section 8.05 and IN NO EVENT SHALL CONTRACTOR BEGIN PERFORMING THAT PORTION OF THE WORK AFFECTED BY SUCH COMMUNICATION OR OTHER EVENT PRIOR TO GIVING SUCH WRITTEN NOTICE TO THE PORT CONTRACT REPRESENTATIVE. Such notice shall include at a minimum:

(i) a written cause and effect narrative which identifies: (y) the communications, event(s) or occurrence(s) forming the basis for Contractor’s Claim; and (z) the specific contractual provisions being relied upon by the Contractor to establish the Port of Houston Authority’s responsibility for each proposed, pending or disputed right to additional compensation (whether in the form of an adjustment to the Contract Price, damages or otherwise),
including the contractual provisions which establish whether the claimed communication, event or occurrence entitles the Contractor to additional compensation (whether in the form of an adjustment to the Contract Price, damages or otherwise); and

(ii) the amount sought by the Contractor, properly itemized and supported by the data required to recover costs under Section 8.07(c) and such other sufficient substantiating data as the Port Contract Representative may require to permit evaluation.

Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 3.12, but shall be provided on the first Working Day following the communication, event or occurrence.

8.07 Calculations of Additional Compensation for Claims, Changes or Modifications:

(a) If the Contractor is entitled to additional compensation (whether in the form of an adjustment to the Contract Price, damages or otherwise) due to:

(i) Changes ordered pursuant to Sections 8.02, 8.03 or 8.04;

(ii) changed conditions or Contract interpretations or other communications pursuant to Sections 8.09 and 8.10;

(iii) suspension of Work ordered pursuant to Section 9.03;

(iv) acceleration of Work ordered pursuant to Section 6.14; or

(v) any other communication, event or occurrence that entitles Contractor to additional compensation (whether in the form of an adjustment to the Contract Price, damages or otherwise) pursuant to the Contract Documents;

such additional compensation shall be determined in accordance with and limited to those costs set forth in this Section 8.07.

(b) If the Contractor is entitled to additional compensation (whether in the form of an adjustment to the Contract Price, damages or otherwise), the adjustment shall be based on one of the following methods:

(i) mutual acceptance of a fixed price properly itemized and supported by sufficient substantiating data satisfactory to the Port Contract Representative to permit evaluation;

(ii) unit costs stated in the Contract Documents or subsequently agreed upon by the parties;

(iii) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

(iv) as provided in Section 8.07(c).

(c) If the Contractor and Port Construction Representative do not agree upon the method for or amount of additional compensation (whether in the form of an adjustment to the Contract Price, damages or otherwise), the amount shall be determined by the Port Construction Representative on the basis of reasonable expenditures and savings of those performing the Work attributable to the Change, communication, occurrence or event forming the basis for the Claim, including, in case of a Change in the Work implemented by a Construction Change Directive or Change Order, a reasonable allowance for
overhead and profit determined in accordance with Section 8.07(d). The Contractor shall not, however, be
titled to an increase in overhead or profit for increases in cost associated with any other communication,
event or occurrence, including changed conditions. If the Contractor and Port Construction Representative
do not agree upon the method for or amount of additional compensation (whether in the form of an
adjustment to the Contract Price, damages or otherwise), and also under Section 8.07(b)(iv), the Contractor
shall keep and present, in such form as the Port Contract Representative may prescribe, an itemized
accounting together with supporting data satisfactory to the Port Contract Representative. Contractor shall
maintain daily records of the Work attributable to the Change, communication, occurrence or event forming
the basis for the Claim and shall provide copies of these records daily, signed by the Contractor’s Field
Supervisor, along with actual invoices and other cost substantiating records to the Construction Manager
at the end of each month. Unless otherwise provided in the Contract Documents, costs for the purposes
of this Section 8.07(c) shall be limited to the following substantiated costs for the Work attributable to the
Change, communication, occurrence or event forming the basis for the Claim:

(i) costs of labor of those approved by the Port Construction Representative actually engaged
    in such Work, including social security, old age and unemployment insurance, fringe
    benefits required by agreement or custom, and workers’ compensation insurance;

(ii) costs of Materials, including cost of transportation, whether incorporated or consumed in
    such Work, based on actual delivered invoice costs; less any discount;

(iii) actual rental costs of Equipment as substantiated by invoices, exclusive of hand tools,
     whether rented from the Contractor or others, for each hour that the Equipment is involved
     in such Work; provided, however, for a particular piece of Equipment owned by the
     Contractor, the rental cost will be based upon a reasonable hourly rate, as agreed upon in
     writing by the Port Contract Representative before such Work is begun;

(1) Payment will not be made for time lost for Equipment breakdowns, time spent to repair
    Equipment, or time after Equipment is no longer needed; provided, however, if
    Equipment is used intermittently while dedicated solely to such Work, payment will be
    made for the duration the Equipment is assigned to such Work but no more than 8
    hours per day;

(iv) actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar
     taxes related to such Work; and

(v) actual additional costs of supervision and field office personnel directly attributable to such
    Work;

provided, however, that all such costs shall be reasonable and in no event shall such costs exceed the
prevailing rates in the vicinity of the Project.

The Port Contract Representative may set prior limitations on the type and kind of Equipment and
Materials for which the Contractor will be compensated.

(d) The Contractor’s fee for overhead and profit, when allowed as a cost, shall be determined
    as follows:

(i) a mutually acceptable fixed fee; or

(ii) if a fixed fee is not agreed upon, then a fee based on the following percentages of the
    various portions of the Cost of the Work:
(a) for costs incurred under Section 8.07(c)(i) and (c)(ii) for labor in the direct employee of Contractor and Equipment and Materials supplied directly by Contractor, the Contractor’s fee shall be fifteen percent (15%);

(b) for costs incurred under Sections 8.07(c)(i) and (c)(ii) for labor, Equipment and Materials provided by Subcontractors, the Contractor’s fee shall be five percent (5%);

(c) where one or more tiers of subcontracts are on the basis of cost of the work plus a fee and no fixed fee is agreed upon, the intent of Section 8.07(d)(ii)(a) is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee not to exceed ten percent (10%) of the costs incurred by such Subcontractor under Sections 8.07(c)(i) and (c)(ii) and that any higher tier Subcontractor and Contractor will each be paid a fee not to exceed five percent (5%) of the amount paid to the next lower tier Subcontractor;

(d) no fee shall be payable on the basis of costs itemized under Sections 8.07(c)(iii), 8.07(c)(iv) and 8.07(c)(v);

(e) for any Change which results in a net decrease in cost will be the amount of the actual net decrease in cost, a deduction in Contractor’s fee by an amount equal to five percent of such net decrease; and

(f) when both additions and credits are involved in any one Change, the adjustment in Contractor’s fee shall be computed on the basis of the net change in accordance with Sections 8.07(d)(ii)(a) through 8.07(d)(ii)(e), inclusive.

Notwithstanding anything in the Contract Documents which may indicate otherwise, the maximum amount payable by the Port of Houston Authority for all overhead, profit and commissions relating to any Claims arising out of this Contract, shall not exceed a maximum aggregate amount equivalent to fifteen percent (15%) of the total of the items listed in Sections 8.07(c)(i) – (ii), regardless of the number of tiers of Subcontractors or Suppliers involved in performing the Change or impacted by the occurrence or event, and regardless of whether the Contractor self-performs a portion of the Change in the Work with its own personnel.

(e) The amount of credit to be allowed by the Contractor to the Port of Houston Authority for a deletion or Change which results in a net decrease in the Contract Price shall be actual net cost as determined by the Port Construction Representative.

(f) In the event the Contractor disagrees with the determination made by the Port Construction Representative pursuant to this Section 8.07, the Contractor may, within five (5) calendar days of the Port Construction Representative’s determination, seek review of the decision by the Port Contract Representative pursuant to Section 8.13 by a signed, written notice to the Port Contract Representative, with a copy to the Port Construction Representative. Failure of the Contractor to seek review of the Port Construction Representative’s decision within such five (5) calendar days period shall be deemed agreement with the Port Construction Representative’s determination and a waiver by the Contractor of its right to assert and recover on a Claim for additional compensation in addition to the adjustment, if any, set forth in the Port Construction Representative’s determination.
8.08 **Limitations on the Costs of Changes or Modifications:**

The original Contract Price may not be increased by more than twenty-five percent (25%) or decreased by more than eighteen percent (18%) without the consent of the Contractor. The execution of a Change Order by the Contractor for amounts in excess of such limitations shall constitute consent.

8.09 **Claims for Changed Conditions:**

Subject to the Contractor's representations and warranties set forth in Section 2.06, if conditions are encountered at the Site that amount to:

(i) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or otherwise discoverable by the Contractor from the Contract Documents or a review of the Site and surrounding area; or

(ii) unknown physical conditions of an unusual nature, which conditions differ materially from those originally found to exist at the Site and from those normally expected to be inherent in construction activities of the character provided for in the Contract Documents;

then the Contractor shall give written notice to the Construction Manager, with a copy to the Port Construction Representative, promptly before such conditions are disturbed and in no event later than five (5) calendar days after first observing such conditions. If the Contractor believes it is entitled to additional compensation (whether as an adjustment to the Contract Price, damages or otherwise), additional time (whether as an adjustment to the Contract Time, relief from its obligation to perform within the Contract Time, or otherwise) or both as a result of such conditions, it shall state the basis for the entitlement and the amount of the addition in such Claim notice. No additional compensation or time or other adjustment shall be permitted, however, in connection with a concealed or unknown condition which is of a usual nature or does not differ materially from those conditions:

(a) ordinarily encountered and generally recognized as inherent to work of the nature provided for in this Contract;

(b) reasonably inferable from the Contract Documents, or which were disclosed by, which could have been investigated, or which reasonably should have been discovered by the Contractor's:
   
   (1) prior inspections, tests, and reviews, for the Project; or

   (2) inspections, tests, and reviews, which the Contractor had the opportunity to make or should have performed based on the Standard of Care; or

(c) which the Contractor should reasonably have known or anticipated based on the area in which the Site is located, the type of improvements involved, and the practices prevalent in the construction industry.

Any such Claim not timely made by the Contractor shall be deemed waived by the Contractor. After the Construction Manager receives such notice, the Port Construction Representative will investigate such conditions and, if the Port Construction Representative agrees that such conditions entitle the Contractor to an adjustment in time, compensation or both, the Port Construction Representative will so inform the Port Contract Representative and recommend, as appropriate, that the Port Contract Representative issue an appropriate adjustment (whether an increase or a decrease) to the Contract Time or that the Port Contract Representative recommend to the Commission that an appropriate adjustment (whether an increase or decrease) be made to the Contract Price or other Contract Documents provisions. If the Port Construction
Representative determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and/or that no Change to the terms of the Contract is justified, the Port Construction Representative shall so notify the Contractor. In the event the Contractor disagrees with the determination made by the Port Construction Representative, the Contractor may, within five (5) calendar days of the Port Construction Representative’s determination, seek review of the decision by the Port Contract Representative pursuant to Section 8.13 by a signed, written notice to the Port Contract Representative, with a copy to the Port Construction Representative. Failure of the Contractor to seek review of the Port Construction Representative’s decision within such five (5) calendar days period shall be deemed agreement with the Port Construction Representative’s determination and a waiver by the Contractor of its right to assert and recover on a Claim in respect of such condition in addition to the adjustment, if any, set forth in the Port Construction Representative’s determination.

8.10 Claims for Contract Interpretations and other Communications:

If the Contractor believes that any response to an RFI, interpretation of the Contract Documents, response to a Submittal, or other communication by the Port Construction Representative, Inspectors, Port Contract Representative or other employee of the Port of Houston Authority or by a Design Consultant or any other consultant of the Port of Houston Authority constitutes a Change, is inconsistent with the Contract Documents, or would entitle Contractor to assert or recover on a Claim of any nature, the Contractor shall immediately notify the Port Construction Representative, with a copy to the Port Contract Representative, in writing, and in any event such notice shall be given within five (5) calendar days after such response, interpretation or communication. If the Contractor believes it is entitled to additional compensation, time, or both whether as an adjustment in the Contract Time, Contract Price or both or in the form of damages or other relief, as a result of such response, interpretation or communication, it shall state the basis for the entitlement and the amount of the entitlement in such notice and comply with the provisions of Sections 8.05, 8.06, 8.07 and 8.11, as applicable. IN NO EVENT SHALL CONTRACTOR BEGIN PERFORMING THAT PORTION OF THE WORK AFFECTED BY SUCH RESPONSE, INTERPRETATION OR COMMUNICATION PRIOR TO GIVING SUCH WRITTEN NOTICE TO THE PORT CONSTRUCTION REPRESENTATIVE, WITH A COPY TO THE PORT CONTRACT REPRESENTATIVE. Any notice not timely made by the Contractor shall be deemed a waiver by the Contractor of its right to assert and recover on a Claim in respect of such response, interpretation or communication. The Port Construction Representative will promptly conduct an investigation pursuant to such notice and, if the Port Construction Representative agrees that such response, interpretation or communication is a Change, is inconsistent with the Contract Documents, or would entitle Contractor to assert or recover on a Claim of any nature, the Port Construction Representative will determine whether to proceed with such response, interpretation or communication and, if so, recommend to the Port Contract Representative that the Port Contract Representative issue a Construction Change Directive or recommend to the Commission an equitable adjustment to the Contract Price or other Contract provisions, as applicable; provided, however, that in the event the communication forming the basis of Contractor’s notice is a communication from the Port Construction Representative, the Port Contract Representative shall conduct such investigation and make such determination. If the Port Construction Representative or Port Contract Representative, as applicable, determines that such response, interpretation or communication is not a Change or otherwise is not inconsistent with the Contract Documents, the Port Construction Representative or Port Contract Representative, as applicable, shall so notify the Contractor. In the event the investigation and determination is made by the Port Construction Representative and the Contractor disagrees with such determination, the Contractor may, within five (5) calendar days of the Port Construction Representative’s determination, seek review of the decision by the Port Contract Representative pursuant to Section 8.13 by a signed, written notice to the Port Contract Representative, with a copy to the Port Construction Representative. Failure of the Contractor to seek review of the Port Construction Representative’s decision within such five (5) calendar days period shall be deemed agreement with the Port Construction Representative’s determination and a waiver by the Contractor of its right to assert and recover on a Claim in respect of such response, interpretation or communication in addition to the adjustment, if any, set forth in the Port Construction Representative’s determination.
8.11 Claims for Time Extensions:

(a) Subject to Sections 8.11(b), (c), (d) and (e), if the Contractor is delayed or hindered at any time in the commencement or progress of the Work, or the commencement or progress of the Work is otherwise interfered with or disrupted by:

(i) an action or inaction of the Port of Houston Authority, or of an employee of the Port of Houston Authority, or of a separate contractor or consultant employed by the Port of Houston Authority; or

(ii) by Changes ordered in the Work; or

(iii) by a weather event or an event of Force Majeure; or

(iv) by delay authorized by the Port of Houston Authority pending mediation; or

(v) by other causes which the Port Contract Representative determines may justify delay;

then, if the other requirements for an extension of time set forth in Section 8.11 are met, the Port Construction Representative will recommend to the Port Contract Representative that the Contract Time shall be extended by Construction Change Directive or Change Order, as applicable, for such time as the Port Construction Representative may determine that the Contractor was prevented from performing Work on the critical path, keeping in mind that the Project owns the float. The Contractor may seek review by the Port Contract Representative of the Port Construction Representative’s recommendation pursuant to Section 8.13 by a signed, written notice to the Port Contract Representative, with a copy to the Port Construction Representative. Acceptance or rejection of requests for time extensions shall be made in the sole discretion of the Port Contract Representative. Any extension of time shall not release the Contractor or its surety from their obligations under the Contract Documents, all of which shall remain in full force until completely discharged.

(b) Subject to Sections 8.11(c) and (d), if the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in this Section 8.11 shall be given on the first Working Day of the week following the week in which the communication, event or occurrence forming the basis for the Claim for an increase in Contract Time first occurs. Such request must contain, at a minimum, the following information:

(i) the latest Revised Baseline Schedule where a Change in the Contract Time was previously made by formal Change Order and/or Construction Change Directive, along with any Change Orders and Construction Change Directives upon which Contractor is relying;

(ii) the latest Progress Schedule which must reflect actual as-built start/finish dates of all relevant activities and be without any constraints, logic changes, hiatuses or other interruptions or deviations;
(iii) graphic analyses comparing the Contractor’s Baseline Schedule (or latest Revised Baseline Schedule, if applicable) versus the latest Progress Schedule showing actual as-built conditions, either by computer-generated graphics or by similar presentations, which comparison must identify all relevant critical path changes;

(iv) written cause and effect narratives which identify each critical path activity by: (a) activity number; (b) the specific calendar dates when the critical path delay occurred; (c) the cause of such delay; and (d) the specific contractual provisions being relied upon by the Contractor to establish the Port of Houston Authority’s responsibility for each proposed, pending or disputed Change in the Contract Time, including the contractual provisions which establish whether the claimed delay entitles the Contractor to an extension of time;

(v) written explanation which clearly depicts and explains all instances of Concurrent Delay;

(vi) written explanation of any constraints, logic changes, critical path changes, hiatuses, interruptions or similar deviations, including all underlying assumptions relating to any such changes made by the Contractor in compiling the delay analyses required by the Contract Documents; and

(vii) written statement describing in a degree of detail acceptable to the Port Contract Representative all steps taken and being taken by Contractor to mitigate against the cause of the relevant adverse schedule impact.

In the case of a continuing delay, only one Claim is necessary.

(c) Subject to Sections 8.11(b) and 8.11(d), 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 greater in the aggregate than the number of days set forth in the Special Conditions as allocated for weather days for each month during the performance of the Work. Contractor expressly acknowledges and agrees that it has accepted the risk associated with any weather events or weather conditions that delay performance of the Work for a cumulative total period of the number of days set forth in the Special Conditions as allocated for weather days or less, in the aggregate, for each month or that the Contractor may make up on weekends or through schedule or staffing adjustments. To the extent that there are weather events or weather conditions that delay performance that are in excess in the aggregate of the number of days for each month set forth in the Special Conditions as allocated for weather days, there shall be a day for day extension of the Contract Time, but only if Contractor complies with the provisions of this Section 8.11, and, in any event, Contractor shall not be entitled to any additional money, an adjustment in the Contract Price or damages as a result of any delay caused by adverse weather conditions or adverse weather events other than to the extent set forth in Section 6.15 for events of Force Majeure.

(d) No extensions of time in certain events:

Notwithstanding the provisions of Sections 8.11(a), (b) and (c) or any other provision of the Contract Documents that might entitle the Contractor to an extension of time, no extensions of time will be granted for any of the following events or occurrences:

(i) when the principal units of Work and tasks on the critical path are not in progress or are not delayed by the event of delay, interference, disruption, or hindrance;

(ii) when at least seven (7) hours of available working time remain out of the Working Day or calendar day, as applicable;
(iii) while materials are drying and it is possible for the Contractor to enclose the area and use drying devices;

(iv) when an event of delay, interference, disruption, or hindrance occurs on a day other than a Working Day or other day when the Contractor had not originally planned to work;

(v) when an event of delay, interference, disruption, or hindrance occurs after the expiration of the Contract Time;

(vi) when adverse weather is the basis of the delay, interference, disruption or hindrance, when an extension is precluded pursuant to Section 8.11(c);

(vii) to the extent the Contractor could have anticipated or alleviated the impact of the event of delay, interference, disruption, or hindrance through reasonable efforts;

(viii) when events of Concurrent Delay overlap the claimed delay; and

(ix) when an extension of time is precluded by any other provision of the Contract Documents.

(e) Failure to file requests for time extensions within the time set forth in and otherwise as required by this Section 8.11 shall constitute a waiver of any rights the Contractor may have had to such time extensions.

8.12 Injury or Damage to Person or Property:

If Contractor suffers injury or damage to person or property because of an act or omission of the Port of Houston Authority, or of others for whose acts the Port of Houston Authority is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the Port of Houston Authority in accordance with Section 3.12. The notice shall provide sufficient detail to enable the Port of Houston Authority to investigate the matter.

8.13 Dispute Resolution, Submission to Jurisdiction, Waiver of Right to Remove and Venue:

(a) Submission to Port Contract Representative: Claims, including those alleging an error or omission by the Port of Houston Authority and or any Design Consultant or other consultant of the Port of Houston Authority, shall be referred to the Port Contract Representative. The Port Contract Representative will review Claims and within thirty (30) days of the receipt of the Claim take one or more of the following actions: (1) request from the Contractor additional supporting data or responses to questions of the Port Contract Representative, (2) reject the Claim in whole or in part, (3) accept the Claim, or (4) suggest a compromise.

If the Port Contract Representative requests the Contractor to furnish additional supporting data or respond to questions, the Contractor shall, within ten (10) days after receipt of such request, either provide a response or the requested supporting data, advise the Port Contract Representative when the response or supporting data will be furnished, or advise the Port Contract Representative that no supporting data will be furnished. Based on such response and any supporting data, the Port Contract Representative will make a decision with respect to the Claim; provided, however, that if the Contractor does not provide a response or the requested supported data within such (10) day period and the Port Contract Representative does not agree to a longer period of time, the Port Contract Representative may make a decision on the Claim without such response or supporting data.
In the event Contractor disagrees with the decision of the Port Contract Representative regarding any Claim or in any other event in which there is a dispute connected to, arising out of or relating to the implementation of or performance of this Contract which the Port of Houston Authority and Contractor have been unable to resolve within thirty (30) days after such dispute arises, a senior representative of the Contractor shall meet with the Port Contract Representative at a mutually agreed upon time and place not later than forty-five (45) days after such decision of the Port Contract Representative or such dispute arises, as applicable, to attempt to resolve the Claim or dispute.

(b) Mediation: In the event the Port Contract Representative and senior representative of the Contractor are unable to resolve any such dispute within fifteen (15) days after the meeting required pursuant to Section 8.13(a), either party may, by written notice to the other, submit such dispute to non-binding mediation before a mutually agreeable mediator. If the parties are unable to agree upon a mediator within twenty (20) days after such written notice of submission to mediation, the American Arbitration Association shall be empowered to appoint a qualified mediator, which mediator, unless otherwise agreed by the parties, shall be a lawyer with no less than fifteen (15) years of experience. The mediation shall be conducted within thirty (30) days of the selection or appointment of the mediator, as applicable. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held at a mutually agreeable location in Houston, Texas. If the parties are unable to agree upon a location, the mediation shall be held at the offices of the American Arbitration Association in Houston, Texas. Participation in non-binding mediation in accordance with this paragraph shall be a condition precedent to Contractor having the right to file any legal or equitable action against the Port of Houston Authority or any of its commissioners, officers, directors, employees or agents.

(c) Jurisdiction and Venue: Subject to the Contractor’s obligation to comply with the requirements of the foregoing Sections 8.13(a) and (b) as a condition precedent to the Contractor having any right to file any legal or equitable action against the Port of Houston Authority or any of its commissioners, officers, directors, employees or agents, for purposes of all legal or equitable proceedings arising out of, relating to or connected with this Contract, the Work, or the Project, the Contractor hereby agrees that this Contract is performable in whole or in part in Houston, Harris County, Texas, and hereby submits to the jurisdiction of the state courts within Houston, Harris County, Texas, and agrees that such jurisdiction shall be exclusive with respect to any such proceeding filed by Contractor. For the avoidance of doubt, the Contractor hereby expressly, clearly and unequivocally agrees that the Port of Houston Authority has the right to choose the forum in which any legal or equitable proceeding arising out of, relating to or connected with this Contract, the Work, or the Project shall be heard; and, having so agreed, the Contractor hereby irrevocably waives its right to remove any such proceeding to any federal court should the Port of Houston Authority choose to bring any proceeding in any state court of Texas. Furthermore, to the fullest extent permitted by law, Contractor hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any proceeding arising out of, relating to or connected with this Contract, the Work, or the Project in any state court residing in Houston, Harris County, Texas. Finally, Contractor hereby irrevocably waives any claim which it may now or hereafter have that any such proceeding brought in any state court in Houston, Harris County, Texas, has been brought in an inconvenient forum.

(d) Right to Notify Surety: The Port of Houston Authority may, but is not obligated to, notify the surety of the nature and amount of any claim against the Contractor. If the claim relates to a possibility of a Contractor’s default, the Port of Houston Authority may, but is not obligated to, notify the surety and request the surety’s assistance in resolving the controversy.

(e) Recovery of Attorneys’ Fees: If Contractor brings one or more Claims against the Port Authority, then for each such Claim, the prevailing party shall be entitled to recover the reasonable expenses and attorneys’ fees incurred by such prevailing party as a result of each such Claim from the other party, to the maximum extent allowed by Applicable Law.
8.14 **Compliance with Claim Procedures:**

Contractor hereby confirms its willingness and ability to comply with the requirements of this Section 8 and hereby agrees that the time periods, notice requirements and procedures set forth in this Section 8 are reasonable time periods, notice requirements and procedures and that the Port of Houston Authority will be prejudiced if Contractor fails to comply with such time periods, notice requirements and procedures. ACCORDINGLY, CONTRACTOR’S FAILURE TO COMPLY WITH THE TIME PERIODS, NOTICE REQUIREMENTS AND PROCEDURES OF THIS SECTION 8 WITH RESPECT TO A CLAIM SHALL CONSTITUTE A WAIVER OF THE CLAIM, INCLUDING CLAIMS ARISING OUT OF THE PORT OF HOUSTON AUTHORITY’S NEGLIGENCE OR OTHER TORTIOUS CONDUCT, BAD FAITH, ARBITRARY OR CAPRICIOUS CONDUCT, INEQUITABLE CONDUCT, BREACH OF CONTRACT OR OTHER FAULT, HOWEVER CHARACTERIZED, OR STRICT LIABILITY WITHOUT REGARD TO FAULT.

END OF GENERAL CONDITIONS SECTION 8
SECTION 9. TERMINATION AND SUSPENSION

9.01 Termination for Convenience of the Port of Houston Authority:

The Port of Houston Authority may terminate this Contract, in whole or in part, at any time without cause by written notice to Contractor. Upon receipt of such notice, the Contractor shall immediately:

(i) cease operations as directed by the Port of Houston Authority in the notice;

(ii) take actions necessary, or that the Port of Houston Authority may direct, for the protection and preservation of the Work;

(iii) place no further orders or subcontracts for Equipment and Materials, services, or facilities except as may be necessary or required for completion of such portion of the Work under the Contract that is not terminated;

(iv) assist the Port of Houston Authority as specifically requested, in writing, in the maintenance, protection, and disposition of property acquired by the Port of Houston Authority under the Contract;

(v) transfer to the Port of Houston Authority title to Work completed for which payment is made to the Contractor; and

(vi) except for Work directed to be performed prior to the effective date of termination stated in the notice and for those subcontracts assigned to the Port of Houston Authority at the Port of Houston Authority’s direction, terminate all existing subcontracts and purchase orders on terms satisfactory to the Port of Houston Authority.

Within thirty (30) calendar days after receipt of such notice, the Contractor shall submit a statement showing, in the form normally required for proposed Estimates for Contract Payment or such other form required by and in a degree of detail satisfactory to the Port Contract Representative, the Work properly in place and performed under the Contract prior to the date of termination and setting forth the amount due Contractor pursuant to this paragraph. Such statement shall be processed for payment as any other Estimate for Contract Payment. Contractor shall be entitled to payment of that proportion of the Contract Price which the properly performed in place Work bears to the total Work called for under the Contract, less any payments previously made, less any costs of any nature whatsoever, including without limitation costs associated with design professionals and other consultants, to the Port of Houston Authority associated with any defective or improper Work by the Contractor or other damages to the Port of Houston Authority for which the Contractor is liable, and less any other amounts which the Port of Houston Authority is entitled to withhold. Payment of such amount is the sole right and remedy of the Contractor and the only compensation to which the Contractor is entitled upon termination for convenience by the Port of Houston Authority. Contractor’s entitlement to receive its final termination payment under this Section 9.01 shall require a final waiver from Contractor and from Subcontractors and Suppliers whose subcontracts are not being continued by the Port of Houston Authority, such documents to be the same form and delivered under the same conditions as final payment absent a termination under this Section 9.01, and shall be subject to all other requirements for payment of an Estimate for Payment set forth in Section 10.

The Contractor shall ensure that all subcontracts contain a similar termination provision. The Contractor is hereby advised and agrees that the Port of Houston Authority will not pay and will not be required to compensate the Contractor for, and Contractor hereby waives any Claims for and right to, any loss of profits, loss of work, termination or additional payment to Subcontractors or Suppliers, or any other damage or out of pocket costs incurred or resulting from such termination, and for any portion of the Work not in place or not in strict compliance with the Contract Documents or Equipment and Materials (ordered,
delivered, on hand, or otherwise) not incorporated into the Work. In the event the amount due the Contractor is less than the amount the Port of Houston Authority is entitled to deduct from such payment, the Contractor or its surety shall pay the Port of Houston Authority the difference.

9.02 Termination for Cause by the Port of Houston Authority:

In the event the Contractor:

(i) refuses or fails to supply enough properly skilled workers or proper Equipment and Materials;

(ii) fails to make payment to Subcontractors for Equipment and Materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

(iii) disregards Applicable Laws;

(iv) assigns the Contract or any part thereof in violation of the Contract Documents;

(v) subcontracts Work in violation of the Contract Documents;

(vi) fails to commence the Work in accordance with the provisions of the Contract Documents;

(vii) fails to prosecute the Work in accordance with its Standard of Care and in strict accordance with the Contract Documents;

(viii) breaches any warranty made by the Contractor under or pursuant to the Contract Documents;

(ix) fails to furnish the Port Contract Representative with assurances satisfactory to the Port Contract Representative evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;

(x) fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than seven (7) days, except as permitted under the Contract Documents;

(xi) makes a general assignment for the benefit of its creditors, is unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any law, state or federal, now in existence or hereafter becoming effective, or any amendment thereto; or

(xii) otherwise fails to perform in accordance with the Contract Documents;

the Port of Houston Authority may, upon one (1) day's written notice to the Contractor, terminate, in whole or in part, the Contractor's right to continue with performance of the Contract or the Contract itself and may:

(a) exclude the Contractor from the Site and take possession of the Site and of all Equipment and Materials, tools, and construction equipment and machinery thereon owned by the Contractor;

(b) accept assignment of subcontracts; and
(c) finish the Work by whatever reasonable method the Port of Houston Authority may deem expedient.

The termination of Contractor’s employment pursuant to this Section 9.02 shall not, unless the Port of Houston Authority expressly agrees in writing, constitute a termination of the Contract, the obligations of Contractor under the Contract, the obligations of Contractor’s surety under any bond, or the obligations of any surety under any Subcontractor bond.

Upon receipt of any such written notice of termination pursuant to this Section 9.02, the Contractor shall, at its expense, for that Work affected by any such termination:

(x) make an inventory of all Equipment and Materials in storage at the Site, in route to the Site, in storage or manufacture away from the Site, and on order from Suppliers;

(y) assign to the Port of Houston Authority subcontracts, supply contracts, and equipment rental agreements, all as designated by the Port of Houston Authority; and

(z) remove from the Site all Equipment and Materials listed in said inventory other than such Equipment and Materials which are designated in writing by the Port of Houston Authority to remain.

In the event of termination pursuant to this Section 9.02, the Port of Houston Authority shall not be obligated to complete the Contract. Alternatively, if the Port of Houston Authority exercises such right of termination, the Port of Houston Authority shall have the right, but not the obligation, to (i) make demand upon the surety of the Contractor’s performance bond to complete the Contract, or (ii) elect to complete the Contract itself or have it completed by another contractor. If the Port of Houston Authority so makes demand upon the surety, the surety shall have the right and privilege, within seven (7) calendar days after receipt of written notice from the Port of Houston Authority making such demand, to assume control of the Contract and all Work performed thereunder and thereafter and to sublet or complete the Work in strict conformity with the Contract. Failure of the surety to do so within such seven (7) calendar days will result in an immediate forfeiture of all rights under such surety’s bond and otherwise at law, in which event the Port of Houston Authority shall have the right to take the prosecution of the Work out of the hands of the Contractor and such surety and to appropriate or use any or all Equipment and Materials as may be suitable and acceptable, and enter into an agreement for the completion of the Contract according to its terms and provisions or to use such other methods as in the Port of Houston Authority’s opinion may be required or desirable for the completion of the Work. Under no circumstances shall the Port of Houston Authority be obligated to let all or any portion of the incomplete Work for rebid or re-proposal, but may make such expenditures as in the Port of Houston Authority’s sole judgment will best accomplish completion.

All costs incurred by the Port of Houston Authority in terminating pursuant to this Section 9.02, including without limitation any costs associated with design professionals and other consultants, court costs, attorneys’ fees and experts’ fees, together with the costs of completing the Work, shall be deducted from any money due or which may become due to the Contractor or its surety. If the Port of Houston Authority elects to complete the Work and all costs pursuant to the foregoing sentence are less than the sum which would have been payable under the Contract had it been completed by the Contractor, then the Contractor or its surety shall be entitled to receive the difference. If such cost exceeds such sum, then the Contractor and its surety shall be liable to and shall pay the Port of Houston Authority the amount of such excess. If the Port of Houston Authority elects to complete the Contract, regardless of whether the surety or the Port of Houston Authority is responsible for completing the Contract, neither the Contractor nor its surety shall be entitled to any further payment until the Work has been finally completed and finally accepted by the Port of Houston Authority.
The provisions of this Section 9.02 shall not limit any other rights of the Port of Houston Authority or any other remedies available to the Port of Houston Authority at law or equity, nor shall forbearance by the Port of Houston Authority to enforce one or more of the remedies provided herein upon an event of default by Contractor be deemed or construed to constitute a waiver of such default.

9.03 **Right of Port of Houston Authority to Suspend the Work:**

The Port of Houston Authority may at any time, with or without cause, suspend performance of all or any portion of the Work by giving Contractor written notice specifying which portion of the Work is to be suspended and the effective date of such suspension. Contractor shall continue to diligently perform any remaining Work that is not suspended and shall take all actions necessary to maintain and safeguard all Equipment and Materials and Work in progress affected by the suspension. Upon receipt of such written notice, the Contractor shall, unless the notice required otherwise:

(i) immediately discontinue work on the date and to the extent specified in the notice;
(ii) place no further orders or subcontracts for Equipment and Materials, services, or facilities with respect to suspended Work other than to the extent required in the notice;
(iii) promptly make every reasonable effort to obtain suspension upon terms satisfactory to the Port of Houston Authority of all orders, subcontracts, and rental agreements to the extent that they relate to performance of Work suspended; and
(iv) unless otherwise specifically stated in the notice, continue to protect and maintain the Project, including those portions on which Work has been suspended.

In the event of suspension by the Port of Houston Authority, the Contractor shall be entitled to additional compensation as follows:

(a) Extra costs determined in accordance with Section 8.07, which are incurred by Contractor, its Subcontractors and Suppliers as a result of continuing to maintain dedicated personnel and Equipment and Materials at the Site at the Port of Houston Authority’s request during any suspension period, including for the purpose of safeguarding all Equipment and Materials and Work in progress; and

(b) Other reasonable and unavoidable extra costs determined in accordance with Section 8.07 which are directly related to any subsequent re-mobilization of the suspended Work.

Contractor shall assert a Claim for such costs and for any additional time for performance in accordance with Section 8. Payment of such additional costs shall be full and complete compensation for the suspension and Contractor shall not be entitled to payment of any additional costs or damages associated with such suspension. Failure to assert a Claim in accordance with Section 8 shall be deemed a waiver of any Claim for an extension of time, additional costs, damages or other relief due to a suspension.
9.04 **Termination by the Contractor:**

The Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor or a Subcontractor of any tier or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

1. issuance of an order of a court or other Governmental Authority having jurisdiction which requires all Work to be stopped; or

2. an act of government, such as a declaration of national emergency which requires all Work to be stopped.

If one of the reasons described in Section 9.04(i) or (ii) exists, the Contractor shall give written notice to the Port Contract Representative of the Contractor’s intention to terminate, setting forth in detail the reason therefore. If the Port of Houston Authority fails to commence correction of the reason for termination stated in such notice within fourteen (14) days of receipt of such notice, the Contractor may, upon seven (7) additional days’ written notice to the Port Contract Representative, terminate the Contract and recover from the Port of Houston Authority payment as if the Port of Houston Authority had terminated for convenience pursuant to Section 9.01.
SECTION 10. PAYMENT

10.01 Schedule of Costs:

(a) The Contractor, after being notified of award of the Contract and before commencing any Work, shall submit to the Port Construction Representative a schedule of costs in such form as required by the Port of Houston Authority allocating the Contract Price to the various items of the Work. Such schedule shall be in a degree of detail acceptable to the Port Construction Representative and the costs reflected therein shall be substantiated by estimates of the Contractor prepared for its Bid/Proposal and shall reflect such other data as the Port of Houston Authority may request. Upon acceptance by the Port Construction Representative, such schedule (the “Schedule of Costs”) shall be the basis for the preparation and submission of monthly estimates.

The Port of Houston Authority reserves the right to reject all or any portion of the Schedule of Costs which does not accurately reflect the Work in reasonable detail or does not accurately reflect an appropriate cost, allocation or proportion of the Work. No Schedule of Costs will be accepted if it is unbalanced or front end loaded. If a Schedule of Costs has been initially accepted and subsequently used, but later found improper for any reason, sufficient funds shall be withheld from future billings to ensure an adequate reserve (exclusive of normal retainage) to complete the Contractor’s Work.

10.02 Progress Payments:

One month after commencement of field construction and each thirty (30) days thereafter during the term of the Contract, the Contractor shall submit an Estimate for Contract Payment in the form approved by the Port of Houston Authority estimating the value of Work performed as of that time and since the previous Estimate for Contract Payment, using as a basis therefor the Schedule of Costs accepted pursuant to Section 10.01. If the method of payment for the Contract is fixed price or partial fixed price, the Contractor’s proposed Estimate for Contract Payment shall reflect the percentage of completion in place of such fixed price Work. The Contractor shall have no right to request payment for any Work prior to actual in-place performance thereof nor shall the Contractor have the right to invoice the Port of Houston Authority any more frequently than once per month. In connection with each proposed Estimate for Contract Payment, the Contractor shall provide to the Port of Houston Authority, and such other persons as the Port of Houston Authority may designate, a copy of certified payrolls as set forth in Section 10.08 and a certificate to the effect that:

(i) the Work is progressing in accordance with the latest accepted Baseline Schedule or Revised Baseline Schedule (except as set forth in such certificate);

(ii) the quality of all Work performed and included in such proposed Estimate for Contract Payment is in compliance with the terms of the Contract Documents;

(iii) the Contractor is entitled to payment of the amount requested on such proposed Estimate for Contract Payment; and

(iv) the Contractor has paid, in accordance with Applicable Law, the applicable Subcontract, and the Contract Documents, all Subcontractors and Suppliers for Work previously invoiced, and the Work which is covered by such proposed Estimate for Contract Payment and all Work which is covered by previous Estimates for Contract Payment is free and clear of all Claims.

The Contractor shall provide with each proposed Estimate for Contract Payment the affidavits and releases required pursuant to Section 10.07 and such other information as required by the Port of Houston Authority.
Such Estimate for Contract Payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or Supplier, unless such Work has been performed by others whom the Contractor intends to pay.

10.03 Inspector’s Review of Billings:

Prior to submitting each estimate for the purpose of substantiating any partial payment, the Contractor shall submit a proposed Estimate for Contract Payment to the Inspector for preliminary acceptance. The Contractor understands and agrees that such monthly estimates will be approximate only and that the Port of Houston Authority will make no attempt to verify exact measurements or quantities therein. As such, such preliminary estimates even if accepted by the Inspector are not binding on the Port Contract Representative or Port of Houston Authority and any Estimates for Contract Payment or payments based on such preliminary estimates are subject to adjustment and correction as set forth in the Contract Documents.

10.04 Nonpayment for Unincorporated Material and Work Not in Place:

Unless and except to the extent provided in the Special Conditions, the Port of Houston Authority shall make (i) no partial payments for Equipment and Materials not incorporated into the Work, even if such Equipment and Materials is stored at the Site, (ii) no partial payment for specially fabricated material, unless and until it is incorporated into the Work, and (iii) no partial payments for Work not physically in place at the Site, including without limitation Work associated with Submittals, Subcontractor oversight, and the like. Any exceptions to this rule, if any, will be noted in the Special Conditions.

10.05 Right to Withhold:

The Port of Houston Authority shall have the right, but not the obligation, to withhold all or any part of payment requested on any proposed Estimate for Contract Payment, or nullify the whole or part of a previously paid Estimate for Contract Payment, to protect the Port of Houston Authority from loss because of:

(i) Work that is defective or not in complete compliance with this Contract when such Work has not been remedied pursuant to this Contract;

(ii) any failure of the Contractor to perform Work in accordance with the provisions of this Contract;

(iii) third party suits, stop notices or Claims for which the Contractor is responsible pursuant to this Contract, including without limitation pursuant to any indemnification obligation hereunder, asserted or filed against any Port of Houston Authority Indemnitee or the Work, the Site or the Project, or any portion thereof;

(iv) damage to the Port of Houston Authority, any Subcontractor, Supplier, Port of Houston Authority Indemnitee or other contractor;

(v) failure of the Contractor to pay any Subcontractor or Supplier, or of Contractor to otherwise pay for any labor or Equipment and Materials;

(vi) any other damage to the Port of Houston Authority, including, without limitation, any additional costs associated with design professionals or other consultants;

(vii) evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
(viii) 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;

(ix) abandonment of the Site;

(x) failure of the Contractor to submit proper proposed Estimates for Contract Payment with all required attachments and supporting documentation; or

(xi) failure of the Contractor to comply with any requirement of the Contract.

The Port of Houston Authority shall not be deemed in default by reason of withholding payment while any of the above grounds remain uncured.

10.06 Overpayment for Defective or Over Estimated Work:

If investigation or inspection reveals that any Work was not performed in compliance with the Contract Documents, and either (i) the value of such Work was included in the current or a prior Estimate for Contract Payment or (ii) such Work was previously paid for by the Port of Houston Authority, then the Contractor shall not include the value of such Work in any subsequent Estimate for Contract Payment or be entitled to any further payment therefor and the Port of Houston Authority shall be entitled to withhold payment therefor from any payment due from the Port of Houston Authority to the Contractor or its surety.

10.07 Contractor’s Submittal of Affidavit and Release:

As a condition precedent to the obligation of the Port of Houston Authority to make payment on any proposed Estimate for Contract Payment, the Contractor shall supply the Port of Houston Authority with affidavits and releases (including without limitation all types of security interest) in the form acceptable to the Port of Houston Authority. The affidavits and releases shall provide, at a minimum, that all amounts due and payable to the Contractor and each Subcontractor and Supplier, as of the date of such proposed Estimate for Contract Payment and as of the date of the last payment received by the Contractor and each Subcontractor and Supplier, as applicable, have been paid in full and that the Contractor and each Subcontractor and Supplier waives, releases and relinquishes any security interest and claim for payment to the extent of all prior Estimates for Contract Payment and, upon receipt of payment, the current Estimate for Contract Payment and any Claims associated with the Work for which such payments have been and are made. Such affidavits and releases shall be duly executed and acknowledged by the Contractor and each Subcontractor and Supplier expecting payment from Contractor in respect of such proposed Estimate for Contract Payment in order to assure an effective release of all claims to the maximum extent permitted by Applicable Law.

The Contractor shall submit with its final proposed Estimate for Contract Payment the Port of Houston Authority’s standard affidavit in respect of final payment for the Contractor and each Subcontractor and Supplier which sets out the amount of the final payment and acknowledges that such payment is full and final payment, provides that the Contractor and each Subcontractor and Supplier releases the Port of Houston Authority from any and all present or future claims against the Port of Houston Authority and provides that the Contractor and each Subcontractor and Supplier has fully paid all financial obligations in connection with the Project.

10.08 Supporting Documents for Progress Payments:

All documents required by the Contract to be submitted with each proposed Estimate for Contract Payment including, without limitation, releases, certified payrolls of Contractor’s employees and
documentation evidencing appropriate insurance coverage shall be, and each must indicate on its face that it is, effective through the invoicing period with respect to which the Contractor is requesting payment. The Port of Houston Authority shall have no obligations to make any or all progress payments until the Contractor meets this requirement.

10.09 **Payment of Subcontractors and Suppliers:**

Contractor shall develop and implement a system and procedure for reviewing, processing, recording and paying Subcontractors and Suppliers which is fully consistent with the requirements to be fulfilled by the Contractor pursuant to the Contract Documents. Such procedures shall especially provide for strict adherence to all waiver and release requirements for Subcontractors and Suppliers of every tier as set forth in the Contract Documents.

In accordance with Applicable Law and each subcontract, the Contractor shall promptly pay each Subcontractor and Supplier, upon receipt of payment from the Port of Houston Authority, out of the amount paid to the Contractor on account of such person’s portion of the Work, pay each Subcontractor, Supplier and other persons supplying labor or Equipment and Materials in the performance of the Work, the amount to which said Subcontractor, Supplier or other person is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor’s, Supplier’s or other person’s portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor and Supplier, require each Subcontractor and Supplier to make payments in a similar manner to those providing labor and Equipment and Materials in connection with the Work.

The Port of Houston Authority has the right, but not the obligation, to request certified payrolls from subcontractors and/or to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and Suppliers amounts paid by the Port of Houston Authority to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence promptly, the Port of Houston Authority shall have the right, but not the obligation, to contact Subcontractors to ascertain whether they have been properly paid. The Port of Houston Authority shall not have an obligation to pay or to see to the payment of money to a Subcontractor, Supplier or other person supplying labor or Equipment and Materials in the performance of the Work.

10.10 **Conditions for Final Payment:**

As a condition precedent to the Contractor having any right to receive, and to the Port of Houston Authority having any obligation to pay, final payment, all requirements in the Contract Documents for final payment must have been met by the Contractor. Such requirements include, but are not limited to those set forth in Sections 6.10, 6.12 and 10.07. Payments which may otherwise become due to the Contractor at or following the point of Substantial Completion shall be withheld contingent upon receipt of the items set forth in Section 6.12 and all other requirements for Final Payment.

10.11 **Payment and Retainage:**

(a) Payment of the Contract Price and payment of the value, net of credits, pursuant to any Change Orders, constitutes full compensation to the Contractor for the performance and completion of the Work and the performance and observance by the Contractor of its obligations under this Contract, except to the extent otherwise stated expressly in this Contract. Based on the monthly estimates accepted by the Port Contract Representative, the Port of Houston Authority shall withhold five percent (5%) of each accepted Estimate for Contract Payment, and such retainage shall apply notwithstanding any Change Orders. The Port of Houston Authority shall have the right to retain the last five percent (5%) of monies earned under the Contract until the terms and conditions of the Contract are completely met and final acceptance of the entire Project is achieved.
(b) Acceptance of final payment by the Contractor, a Subcontractor or Supplier shall constitute a waiver of claims by that payee.

10.12 Title to Work:

Title to all Work, Equipment and Materials covered by each proposed Estimate for Contract Payment shall pass to the Port of Houston Authority no later than the time of payment therefor. The Contractor warrants that title to all Work (including all Equipment and Materials) covered by an Estimate for Contract Payment will pass to the Port of Houston Authority no later than the time of payment. The Contractor further warrants that upon submittal of an Estimate for Contract Payment all Work for which Estimates for Contract Payment have been previously issued and payments received from the Port of Houston Authority shall be free and clear of claims, security interests or encumbrances in favor of the Contractor, Subcontractors, Suppliers, or other persons or entities making a claim by reason of having provided labor, Equipment and Materials relating to the Work. Further, immediately upon the performance of any part of the Work, as between Contractor and the Port of Houston Authority, title thereto shall vest in the Port of Houston Authority. The vesting of such title shall not impose any obligations on the Port of Houston Authority or relieve Contractor of any of its obligations hereunder. The Contractor further warrants that it shall acquire no Work or Equipment and Materials, whether directly or through a Subcontractor, subject to an agreement under which a security interest is retained by the seller or otherwise imposed by the Contractor, any Subcontractor, or any other person or entity. Notwithstanding the passage of title, risk of loss or damage shall remain with Contractor until the Port of Houston Authority finally accepts the Work.

10.13 Payment Not Waiver or Acceptance of Work:

No payment made by the Port of Houston Authority pursuant to this Contract shall constitute a waiver of any claim or right (including without limitation claims or rights of the Port of Houston Authority in respect of warranty rights or indemnification obligations of the Contractor) the Port of Houston Authority may have against the Contractor, any Subcontractor or Supplier at that time or thereafter. No payment made by the Port of Houston Authority under this Contract shall be considered or deemed to represent that the Port of Houston Authority has inspected the Work or in any way checked the quality or quantity of the Work or that the Port of Houston Authority knows or should know or has ascertained how or for what purpose the Contractor has used sums previously paid to it by the Port of Houston Authority, nor shall any such payment be deemed to be or construed as an approval or acceptance of any Work. All payments (including without limitation final payment), withholdings and offsets shall be subject to correction and adjustment in subsequent progress reviews and payments or by offset or withholding.

10.14 Right to Audit:

(a) Contractor shall at all times implement and maintain such cost control systems and daily record keeping procedures as may be necessary to attain proper fiscal management and detailed financial records for all costs related to the Work, including detailed transaction reports and cost coding for Contractor's Subcontractors and Suppliers of every tier. To the maximum extent possible, all cost and pricing data shall be organized, maintained and presented in a format that is factually verifiable without the need to consider judgmental factors or estimates. Additionally, all cost and pricing data shall include the identification of any markups, vendor quotations, pricing methodologies or any other information that can be reasonably expected to contribute to the soundness or validity of either actual or estimated costs. To facilitate the settlement of Change Orders, Construction Change Directives, Change Proposals and Claims pursuant to the Contract, Contractor and its Subcontractors and Suppliers of every tier shall at all times implement and maintain records sufficient for the Port Authority to verify all costs to the extent payable in accordance with the Contract.

Records to be maintained by the Contractor and its Subcontractors and Suppliers of every tier shall include, but are not limited to the following: (i) payroll records and payroll burden costs on actual wages
and salaries (payroll taxes, insurance, benefits, etc.); (ii) daily time sheets and other records of personnel utilization on specific Work activities, including records on an hourly basis for personnel performing Construction Change Directive, Change Proposals, and Change Order activities and/or during any periods of overtime and/or during periods of premium pay for Work on holidays; (iii) invoices for Equipment and Materials, accounts payable and accounts receivable; (iv) all Drawings, Specifications, schedules, instructions, samples, receipts, subcontract documentation, purchase orders and vouchers; (v) all correspondence, minutes of meetings, daily logs including schedule status reports, memoranda and other similar data; (vi) all agreements, subcontracts and purchase orders for every tier; and (vii) records of all change orders submitted and/or approved for all subcontracts, sub-subcontracts and purchase orders of every tier. It is further understood that records subject to audit include Project-related records maintained by parent companies, affiliates, subsidiaries or other related parties.

(b) Contractor shall maintain the records set forth in Section 10.14(a) for a minimum of five (5) years after Final Payment.

(c) The Port of Houston Authority’s authorized representatives shall be afforded access, in Houston, Texas, to the records described in Section 10.14(a) at all reasonable times for purposes of inspection and audit to the full extent as may be necessary to assist the Port of Houston Authority in the resolution of any issues pertaining to Construction Change Directives, Change Orders, Change Proposal, Claims or any other issues pertaining to the Work or the Project. This shall include, but not be limited to, providing the Port of Houston Authority’s authorized representatives access, in Houston, Texas, at all reasonable times to records necessary for evaluation and verification of cost or pricing data with respect to: (i) all negotiated Change Orders to this Contract, (ii) all subcontracts and purchase orders, including change orders or modifications thereto; (iii) Contractor’s compliance with all provisions of the Contract Documents, including those relating to lump-sum or fixed price contracts, subcontracts and purchase orders; (iv) all costs described in the Contract; (v) instances where the parties are unable to resolve cost data or scheduling issues pertaining to pending Construction Change Directives or Change Proposals; and (vi) instances where the parties are unable to resolve cost data or scheduling issues pertaining to any pending Claims. Without limiting the foregoing, the Port of Houston Authority shall also have the right to request that the Contractor provide such information to the Port of Houston Authority upon the Port of Houston Authority providing a notice to the Contractor requesting such information and in such event the Contractor shall be obligated to provide such information to the Port of Houston Authority within five (5) Working Days of the Port of Houston Authority making such request.

It is expressly understood that the Port of Houston Authority’s audit rights as set forth in this Section 10.14 include the right to audit all accounting and Project-related records as defined in Section 10.14(a) belonging to the Contractor, its Subcontractors and Suppliers which may directly or indirectly relate to specific Project-related accounting concerns, including but not limited to any of the following: (1) the submittal of Change Proposals or Claims; (2) unilateral implementation of value engineering without acceptance or without passing on the cost benefits to the Port of Houston Authority; (3) Port of Houston Authority accepted “add alternatives” not provided or installed where the Port of Houston Authority has requested and/or paid for such alternatives; (4) payments for performance bonds or insurance premiums, if applicable; (5) specified quantity or quality of Equipment and Materials not installed or utilized; (6) specified construction methods not followed; (7) specified services not provided; (8) contracted Work not performed or completed; (9) Port of Houston Authority provided items not credited; (10) charges for overtime, including weekends and public holidays; (11) overruns and underruns with respect to allowance items; (12) labor burden rates to hours in excess of forty (40) hours per week; (13) constructive and actual accelerations; (14) constructive and active suspensions; and (15) disruptions of craft labor.

It is further expressly understood that the Port of Houston Authority’s audit rights as set forth in this Section 10.14 do not include the right to audit costs which are included: (y) within mutually agreed lump-sum prices, fixed fees, unit costs, fixed hourly rates or fixed percentages (such as labor burden percentage rates); or (z) within fixed price subcontracts or purchase orders accepted by the Port Authority.
(d) Contractor shall produce all data in the form maintained and used by Contractor in its normal course of business unless otherwise requested by the Port of Houston Authority. Contractor agrees that, if any Project-related information is maintained by Contractor in a computerized format, such information will be made available to the Port of Houston Authority in a readily accessible and useable format, including when required by providing access to the Port of Houston Authority to any software or database necessary to access, use and audit the data, within three (3) Working Days after a written request by the Port of Houston Authority.

(e) In addition to the Port of Houston Authority’s other right to access data from the Subcontractors and Suppliers of every tier, Contractor shall be required to submit cost or pricing data described in this Section 10.14 on each Change Order requested by and/or accepted for all the Subcontractors and Suppliers of every tier.

Contractor shall require all Subcontractors and Suppliers of every tier to comply with the provisions of this Section 10.14, by insertion of this "Right to Audit" clause (Section 10.14) into each Project-related subcontract and purchase order of all tiers. In this regard, the Port of Houston Authority shall have the right to act as Contractor's authorized representative for the purpose of conducting audits in accordance with this Section 10.14 of all accounting and Project-related records in the possession of the Subcontractors and Suppliers of every tier. It is specifically understood, however, that the Port of Houston Authority has no contractual relationship with any Subcontractor or Supplier of any tier. Likewise, it shall remain the Contractor's financial and contractual responsibility to resolve all such issues with its Subcontractors and Suppliers of every tier.

(f) In order to permit evaluations and verifications as described in this Section 10.14, Contractor shall provide adequate and appropriate work space in Houston, Texas, for the Port of Houston Authority's authorized representatives, including allowing photocopying of any and all records reasonably requested. Upon request, Contractor shall also fully cooperate in arranging interviews with Contractor's employees and shall require all Subcontractors and Suppliers of every tier to likewise fully cooperate pursuant to this Section 10.14.

10.15 Offset:

If the Port of Houston Authority is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Port of Houston Authority. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Port of Houston Authority, or if the Port of Houston Authority incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, or if the Contractor owes the Port of Houston Authority money for any other reason, the Port of Houston Authority, without waiver or limitation of any of its other rights or remedies under this Contract and Applicable Law, shall have the right but not the obligation to from time to time deduct from any amounts due or owing by the Port of Houston Authority to the Contractor or its surety any and all amounts owed by the Contractor or its surety to the Port of Houston Authority, or issue a written notice to the Contractor reducing the Contract Price by an amount equal to that which the Port of Houston Authority is entitled.
SECTION 11. GENERAL PROVISIONS

11.01 Taxes:

(a) The Port of Houston Authority, being a political subdivision of the State of Texas, is exempt from all sales taxes on material purchased in Texas and incorporated into a Project. The Contractor and any Subcontractor or Supplier must have or obtain all necessary permits and certificates to purchase on a tax-free basis any material purchased in Texas and incorporated into the Project.

(b) The Contract Price includes all corporate income tax, employee benefit taxes for all Work (whether by the Contractor, Supplier, Subcontractor or sub-subcontractor), and taxes imposed upon the wages of the Contractor’s employees, agents and representatives. The Contractor shall pay as and when due all taxes levied or imposed upon the Contractor relating to performance and completion by the Contractor of the Work.

11.02 Conflicts of Interest:

The Contractor and its officers, directors, shareholders, members, partners, employees or agents are positively forbidden from giving or lending money, or any other thing of value, to the Port of Houston Authority, any Port of Houston Authority Commissioner, or to any Port of Houston Authority officer, director, employee or agent or to any member of the family of any of the foregoing.

Should any of the above enumerated persons connected with the Port of Houston Authority have a direct or indirect monetary interest in the Contractor’s company or parent company, then such person must disclose in writing the nature and extent of such interest to the Port of Houston Authority with any Bid/Proposal submitted.

11.03 Prevailing Wage Scale:

All on-Site employees and employer’s delivery persons shall be paid no less than the wages shown and, where shown, fringe benefits shown on the Harris County Building Construction Prevailing Wage Rates and Worker Classifications, Harris County Road Bridge Construction Prevailing Wage Rates and Worker Classifications and the Port of Houston Authority’s Prevailing Wage Scale Rates for Hydraulic Dredging Operations, a copy of which is included in the Contract Documents. See such schedule for further details. However, where there is a contract between the employer and his employees or their respective representatives governing fringe benefits, the fringe benefits shall be paid in accordance with such contract. Contractor should be aware that Texas Government Code Chapter 2258, Prevailing Wage Rates, provides, among other things, that:

(i) If the Contractor or a Subcontractor violates this law by underpayment of wages, the Contractor must pay to the Port of Houston Authority $60.00 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates required by the Contract. This money becomes the property of the Port of Houston Authority.
(ii) The Contractor and each of its Subcontractors must keep a record showing:

(a) the name and occupation or each worker employed by the Contractor or Subcontractor in the construction of the Project; and

(b) the actual per diem wages paid to each worker.

These records must be open to inspection by the Port of Houston Authority at all reasonable hours.

(iii) Within 30 days of receipt of a complaint, the Port of Houston Authority shall make a determination whether good cause exists to believe that the Contractor or Subcontractor has committed a violation of the law. If good cause is found to exist that a violation has been committed, the law requires the Port of Houston Authority to retain any amounts due under the Contract pending a final determination.

(iv) If the Contractor or Subcontractor and the affected worker(s) do not reach agreement within 14 days of notice of the Port of Houston Authority’s determination, the issues must be submitted to binding arbitration in accordance with the Texas General Arbitration Act.

(v) Any awards made by the arbitrator in favor of the worker(s) shall be paid out of the Contractor’s funds held by the Port of Houston Authority. If the amounts held by the Port of Houston Authority are insufficient, the worker has a right of action against the Contractor or Subcontractor and the surety of the Contractor or Subcontractor to recover the amount owed, reasonable attorney’s fees and court costs.

(vi) The Port of Houston Authority is not a party to the arbitration proceedings.

(vii) No officer, agent or employee of the Port of Houston Authority is liable in a civil action for any act or omission implementing or enforcing the applicable law unless the action is made in bad faith.

(viii) The Contractor is entitled to rely on a certificate by a Subcontractor as to the payment of all sums due to those working for and under that Subcontractor until the contrary has been determined.

(ix) The Prevailing Wage Scale Rates and Worker Classifications shall be posted at the Site in a prominent accessible location.

11.04 Assignment of Antitrust Causes of Action:

By submitting a Bid/Proposal or entering into a Contract with the Port of Houston Authority, the Contractor offers and agrees to assign to the Port of Houston Authority all causes of action it may have under the Antitrust Laws of Texas and/or Antitrust Laws of the United States. Such assignments shall be made and become effective when the Port of Houston Authority tenders final payment to the Contractor without any further action or acknowledgement by the parties.
11.05 Small Business Development Program:

The Port of Houston Authority has a Small Business Development Program which was created to help implement the Port of Houston Authority’s objectives of promoting economic development and business opportunities for all sectors of the local economy. Contractor is required to use good-faith efforts to meet certified small business participation goals. Contractor shall submit a quarterly report via the B2GNow link located in the Small Business, Contract Compliance section of the Port of Houston Authority’s website (http://www.portofhouston.com/). Contractor shall report all payments to any small business Subcontractors (including any small business material suppliers) through the audit tab located in the B2GNow application for confirmation by such Subcontractors. Contractor may consult the B2GNow Vendor Guide for assistance with the B2GNow application. If no payments to small business Subcontractors occur during the quarter, Contractor shall so indicate in the B2GNow application. Contractor shall report all small business subcontracting or material supply activity until Project is complete and closed. Contractor shall provide such other information regarding its small business participation in the form and at the times requested by the Port of Houston Authority.

The Small Business Development Program is administered by its Policies and Procedures (most recent version). Contractor should be aware of the contents of the Small Business Development Program Policy and Procedures. Specifically, Contractor should know that its failure to adhere to the requirements of the Small Business Development Program may result in a default and termination of the contract.

In addition to other provisions of the Small Business Development Program, Contractor should be expressly aware of the obligations to:

(i) adhere to Port of Houston Authority’s Non-Discrimination Mandate;
(ii) submit utilization reports to the Port of Houston Authority on small business participation;
(iii) make good-faith efforts to meet a contract small business participation goal or to maintain small business participation; and
(iv) adhere to the dispute resolution mechanisms of the Small Business Development Program.

11.06 Contractor’s Insurance Requirements:

(a) The Contractor shall, at all times during the performance of Work under this Contract and through the expiration of the period set forth in Section 7.04, provide and require all Subcontractors to provide insurance coverage with companies lawfully authorized to do business in Texas and acceptable to the Port of Houston Authority, which coverage will protect the Contractor from claims set forth below which may arise out of or result from the Contractor’s operations under the Contract Documents and for which the Contractor may be legally liable, whether such operations are by the Contractor or a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and meeting not less than the minimum requirements shown below. Such insurance is to be provided at the sole cost of the Contractor and all Subcontractors.

Any additional coverage in kind or limits will be set out in the Special Conditions.

Kinds of Claims:

1. claims under workers’ or workmen’s compensation, disability benefit and other similar employee benefit acts which are applicable to the Contractor’s Work to be performed pursuant to Section 11.06(b);

2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor’s employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor’s employees;

4. claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;

5. claims for damages, other than to the Contractor’s Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and

(b) Workers’ Compensation Insurance Coverage.

(i) The following definitions shall apply for purposes of this Section 11.06(b):

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

Duration of the Project – includes the time from the beginning of the Work on the Project until the Contractor’s/person’s work on the Project has been completed and accepted by the Port of Houston Authority.

Persons providing services on the Project (“subcontractor” in Texas Labor Code, §406.096) – includes all persons or entities performing all or part of the Work and services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, Subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project.

“Services” includes, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(ii) The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.

(iii) The Contractor must provide a certificate of coverage to the Port of Houston Authority prior to being awarded the Contract.

(iv) If the coverage period shown on the Contractor’s current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Port of Houston Authority showing that coverage has been extended.
(v) The Contractor shall obtain from each person providing services on the Project, and provide to the Port of Houston Authority:

   (1) a certificate of coverage, prior to that person beginning Work on the Project, so the Port of Houston Authority will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

   (2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

(vi) The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

(vii) The Contractor shall notify the Port of Houston Authority in writing by certified mail or personal delivery, within ten (10) calendar days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

(viii) The Contractor shall post on each Project Site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

(ix) The Contractor shall contractually require each person with whom it contracts to provide services on the Project, to:

   (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;

   (2) provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

   (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

   (4) obtain from each other person with whom it contracts, and provide to the contractor:

      (a) a certificate of coverage, prior to the other person beginning Work on the Project; and

      (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

   (5) retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
(6) notify the Port of Houston Authority in writing by certified mail or personal delivery, within ten (10) calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

(x) By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Port of Houston Authority that all employees of the Contractor who will provide services on the Project will be covered by workers’ compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission’s Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

(xi) The Contractor’s failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Port of Houston Authority to declare the Contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Port of Houston Authority.

11.07 Insurance:

Proof of Insurance. Prior to the commencement of any Work under this Contract, Contractor shall furnish the Port Authority with certificates of insurance, in compliance with Applicable Law, showing Contractor’s procurement of the insurance required hereunder. Contractor agrees to review each certificate, and hereby warrants to the Port Authority the accuracy of all information shown on each Insurance Certificate furnished. The Port Authority shall have no duty to pay or perform under this Contract until such Insurance Certificates have been provided to the Port Authority, and no officer or employee, other than Port Authority Risk Management, shall have authority to waive this requirement.

Form of Policy. The Port Authority reserves the right to review the insurance requirements of this Section during the effective period of the Contract, and any extension or renewal thereof and to modify insurance coverage and limits when deemed necessary and prudent by its Risk Management Department based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the Port Authority allow modification whereupon the Port Authority may incur increased risk.

Deductibles. A Contractor’s financial integrity is of interest to the Port Authority. Therefore, subject to Contractor’s right to maintain reasonable deductibles in such amounts as are approved by Port Authority Risk Management, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension thereof, at Contractor’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the Port Authority, in the following types and amounts. Any additional coverage in kind will be set out in the Special Conditions.
### Minimum Insurance Requirements.

<table>
<thead>
<tr>
<th>COVERAGE TYPE</th>
<th>AMOUNTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Workers’ Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers’ Liability</td>
<td>$500K/$500K/$500K</td>
</tr>
<tr>
<td>U.S. Longshore &amp; Harbor Workers’ Act (If exposure exists)</td>
<td>Statutory</td>
</tr>
<tr>
<td>2) Commercial General Liability Insurance</td>
<td>$1 Million per Occurrence</td>
</tr>
<tr>
<td>a. Premises Operations</td>
<td>$2 Million Aggregate</td>
</tr>
<tr>
<td>b. Independent Contractors</td>
<td>$50K Fire Damage Liability</td>
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<tr>
<td>c. Products/Completed Operations</td>
<td></td>
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<tr>
<td>d. Personal Injury</td>
<td></td>
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<tr>
<td>e. Contractual Liability</td>
<td></td>
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<tr>
<td>3) Business Automobile Liability</td>
<td>$1 Million per Occurrence</td>
</tr>
<tr>
<td>a. Any auto</td>
<td></td>
</tr>
<tr>
<td>4) Umbrella/Excess Liability</td>
<td>$2,000,000 per Occurrence/Aggregate</td>
</tr>
<tr>
<td>Umbrella/excess insurance shall have the same inception and expiration dates as the underlying liability policies and with coverage no less broad than those in the primary policies or program.</td>
<td></td>
</tr>
<tr>
<td>5) Builder’s Risk</td>
<td>Please see (i) below for amount</td>
</tr>
<tr>
<td>On an all risk policy form covering, without limitation, perils of fire and extended coverage and physical loss or damage, including without duplication of coverage, theft, flood, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any Applicable Laws, and covering reasonable compensation for the Port of Houston Authority’s and Design Consultant’s services and reasonable expenses of the Port of Houston Authority and Design Consultant which are required as a result of such loss.</td>
<td></td>
</tr>
<tr>
<td>(i) Amount is the initial Contract Price and any subsequent modifications thereto for the entire Work and Equipment and Materials stored at the Site, stored off-Site or being shipped to the Site, including materials supplied by the Port of Houston Authority, on a replacement cost basis without voluntary deductibles</td>
<td></td>
</tr>
</tbody>
</table>

**Policy Endorsements.** The Port Authority shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the Port Authority, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the Port Authority, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof. In addition, Contractor, upon request, shall promptly: permit the Port Authority to inspect the originals of all required insurance at the offices of Contractor or its insurance broker; and authorize the Port Authority and/or the Port Authority’s insurance broker to communicate directly (by telephone, email, or in person) with Contractor’s insurance broker for the purpose of verifying Contractor’s compliance with the Contract Documents or to answer questions concerning Contractor’s insurance.

Contractor agrees that with respect to the above required insurance, all insurance policies of Insurance will contain the following required provisions.
1) To the fullest extent allowed by applicable Law, name the Port Authority and its Commissioners, officers, employees, agents, and other legal representatives as additional insureds (as the interests of each insured may appear) as to the full extent of all applicable coverages with respects to operations and activities of, or on behalf of, the named insured performed under contract with the Port Authority, with the exception of workers’ compensation policy, but in each instance such additional insured status shall be only to the extent of the Contractor’s indemnification obligations under the Contract Documents. Builder’s risk policy shall name the Port Authority as a named insured and “loss payee”;

2) The Contractor’s insurance shall be deemed primary with respect to any insurance or self-insurance carried by the Port Authority for liability arising out of operations under the Contract with the Port Authority.

3) Inasmuch as the Port Authority and Contractor intend that all of Contractor’s insured losses and liabilities fall upon Contractor’s insurers, without recourse against the Port Authority, Contractor agrees to cause of all its policies of insurance maintained in force or procured by Contractor during the Work to provide, if necessary by endorsement, that each such insurer fully waives subrogation against the Port Authority.

4) Contractor hereby releases the Port from and waives all Claims it may have against the Port to the extent any of such Claims are covered by insurance required to be furnished by Contractor or any Subcontractors hereunder, whether or not Contractor actually obtains such insurance, and EVEN IF SUCH CLAIMS ARISE OUT OF, RELATE TO OR ARE BASED UPON THE PORT AUTHORITY’S OWN NEGLIGENCE OR OTHER TORTIOUS CONDUCT, BAD FAITH, ARBITRARY OR CAPRICIOUS CONDUCT, INEQUITABLE CONDUCT, BREACH OF CONTRACT OR OTHER FAULT, HOWEVER CHARACTERIZED, OR STRICT LIABILITY WITHOUT REGARD TO FAULT.

Change Notification. All policies for which the Port Authority is a named insureds or additional insureds shall be endorsed to require the insurer to provide the Port Authority with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy or other material change in coverage, cancellation, or non-renewal of the insurance coverage required under this Contract. For policies on which the Port Authority is neither a named insured nor an additional insured, Contractor shall provide the Port Authority with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy or other material change in coverage, cancellation, or non-renewal of the insurance coverage required under this Contract. All notices shall be given to the Port Authority at the following address:

Port of Houston Authority
111 East Loop North
Houston, TX 77029
Attn: Risk Manager

Failure to Maintain. If the Contractor fails to purchase and maintain insurance required under the Contract Documents, the Port Authority may, but is not obligated to, purchase such insurance on behalf of the Contractor and shall be entitled, at the Port Authority’s election, to offset the costs thereof from amounts due to the Contractor or to reimbursement by the Contractor upon demand.

Limits of Liability. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor’s or its subcontractors’ performance of the work covered under this Contract.
Contract Obligations. The insurance requirements set forth herein shall not limit or define the obligations of Contractor as set forth elsewhere in this Contract.

Subcontractor Requirements. Upon Port Authority’s request, Contractor shall provide Port Authority with proof of insurance from each subcontractor to be utilized by Contractor under this Contract. This certificate shall set forth the types and levels of insurance currently maintained by subcontractors and shall, to the extent reasonably practicable, be consistent with the requirements of this Section 11.07. Port Authority may, in its sole discretion, object to any subcontractor that Port Authority determines does not maintain appropriate insurance coverage given the nature of its work, in which event Contractor shall find a replacement, acceptable to Port Authority in its reasonable discretion.

11.08 Indemnification by Contractor:

TO THE MAXIMUM EXTENT ALLOWED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS ALL PORT OF HOUSTON AUTHORITY INDEMNITEES, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, CAUSES OF ACTION, SETTLEMENTS, LIABILITIES, COSTS, EXPENSES, DAMAGES, LOSSES, FINES, AND JUDGMENTS (INCLUDING, WITHOUT LIMITATION, COURT COSTS, EXPERTS’ FEES AND ATTORNEY’S FEES) (COLLECTIVELY, “LOSSES”), WHETHER ARISING IN EQUITY, AT COMMON LAW, OR BY STATUTE, INCLUDING WITHOUT LIMITATION THE TEXAS DECEPTIVE TRADE PRACTICES ACT (AS AMENDED) OR SIMILAR STATUTE OF OTHER JURISDICTIONS, OR UNDER THE LAW OF CONTRACTS, TORTS (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY WITHOUT REGARD TO FAULT) OR PROPERTY,

(I) FOR BODILY INJURY OR DEATH OF AN EMPLOYEE OF CONTRACTOR OR ANY OF ITS AGENTS OR SUBCONTRACTORS, EVEN IF SUCH BODILY INJURY OR DEATH IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR OTHER TORTIOUS CONDUCT, BAD FAITH, ARBITRARY OR CAPRICIOUS CONDUCT, INEQUITABLE CONDUCT, BREACH OF CONTRACT OR WARRANTY, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT, HOWEVER CHARACTERIZED, OR STRICT LIABILITY WITHOUT REGARD TO FAULT OF ANY PORT AUTHORITY INDEMNITEE; AND

(II) OF EVERY KIND OR CHARACTER (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR PROPERTY DAMAGE, AND ECONOMIC LOSS), SAVING ONLY THOSE ENCOMPASSED BY SECTION 11.08(I) ABOVE, AND EVEN IF ANY SUCH LOSSES ARE DUE IN PART TO ANY PORT OF HOUSTON AUTHORITY INDEMNITEES’ CONCURRENT (BUT NOT SOLE) NEGLIGENCE OR OTHER TORTIOUS CONDUCT, BAD FAITH, ARBITRARY OR CAPRICIOUS CONDUCT, INEQUITABLE CONDUCT, BREACH OF CONTRACT OR WARRANTY, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT, HOWEVER CHARACTERIZED, OR STRICT LIABILITY WITHOUT REGARD TO FAULT; PROVIDED, HOWEVER THAT CONTRACTOR’S OBLIGATION UNDER THIS SECTION 11.08(II) SHALL BE LIMITED TO THE PERCENTAGE OF DAMAGES CAUSED BY THE CONTRACTOR’S (OR ANY OF ITS EMPLOYEES’, AGENTS’ OR SUBCONTRACTORS’ OF ANY TIER) OWN NEGLIGENCE OR OTHER FAULT, BREACH OF CONTRACT OR WARRANTY, BREACH OR VIOLATION OF STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR STRICT LIABILITY WITHOUT REGARD TO FAULT;

IN EACH INSTANCE, ARISING IN FAVOR OF OR BROUGHT BY ANY OF THE CONTRACTOR’S EMPLOYEES, AGENTS, SUBCONTRACTORS, SUPPLIERS OR REPRESENTATIVES, OR BY ANY GOVERNMENTAL AUTHORITY OR ANY OTHER THIRD PARTY, AND BASED UPON, IN CONNECTION
WITH, RELATING TO OR ARISING OUT OF THE WORK, THE CONTRACTOR’S FAILURE TO COMPLY WITH THE CONTRACT DOCUMENTS, OR THE CONTRACTOR’S ACTIONS OR INACTIONS UNDER THE CONTRACT DOCUMENTS, INCLUDING WITHOUT LIMITATION ANY FAILURE TO PAY TAXES OR FAILURE TO COMPLY WITH ANY APPLICABLE LAWS.

THE INDEMNIFICATION OBLIGATION OF THIS SECTION 11.08 OR UNDER SECTION 11.09 SHALL APPLY REGARDLESS OF THE AMOUNT OF INSURANCE COVERAGE HELD BY THE CONTRACTOR, INCLUDING WITHOUT LIMITATION ANY SUCH COVERAGE UNDER ANY WORKER’S COMPENSATION ACT, DISABILITY ACT, OR OTHER ACT OR LAW WHICH WOULD LIMIT THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR, AND SHALL NOT BE LIMITED BY ANY INSURANCE CARRIED OR PROVIDED BY THE CONTRACTOR IN ACCORDANCE WITH THE CONTRACT DOCUMENTS OR OTHERWISE.

11.09 Intellectual Property and Technology Indemnity:

TO THE MAXIMUM EXTENT ALLOWED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS ALL PORT OF HOUSTON AUTHORITY INDEMNITEES FROM AND AGAINST ANY AND ALL LOSSES, WHETHER ARISING IN EQUITY, AT COMMON LAW, OR BY STATUTE, INCLUDING, WITHOUT LIMITATION, THE TEXAS DECEPTIVE TRADE PRACTICES ACT OR SIMILAR STATUTE OF OTHER JURISDICTIONS, OR UNDER THE LAW OF CONTRACTS, TORTS (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY WITHOUT REGARD TO FAULT) OR PROPERTY, OF EVERY KIND OR CHARACTER (INCLUDING, WITHOUT LIMITATION, FOR PERSONAL INJURY (INCLUDING EMOTIONAL DISTRESS), REAL OR PERSONAL PROPERTY DAMAGE, OR ECONOMIC LOSS), ARISING IN FAVOR OF OR BROUGHT BY ANY OF CONTRACTOR’S EMPLOYEES, AGENTS, SUBCONTRACTORS, SUPPLIERS, OR REPRESENTATIVES, OR BY ANY GOVERNMENTAL AGENCY OR ANY OTHER THIRD PARTY, BASED UPON, IN CONNECTION WITH, RELATING TO OR ARISING OUT OF:

(I) INFRINGEMENT OR THE IMPROPER USE OF COPYRIGHTED MATERIAL EVEN IF SUCH LOSSES ARE DUE TO ANY PORT OF HOUSTON AUTHORITY INDEMNITEE’S OWN NEGLIGENCE OR OTHER TORTIOUS CONDUCT, BAD FAITH, ARBITRARY OR CAPRICIOUS CONDUCT, INEQUITABLE CONDUCT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF STATUTE, OR OTHER FAULT, HOWEVER CHARACTERIZED, OR STRICT LIABILITY WITHOUT REGARD TO FAULT;

(II) INFRINGEMENT OR THE IMPROPER USE OF PATENTS, TRADEMARKS, TRADE SECRETS, OR OTHER PROPRIETARY OR INTELLECTUAL PROPERTY RIGHTS WHICH MAY OCCUR IN CONNECTION WITH CONTRACTOR’S (OR ANY SUBCONTRACTORS’, SUPPLIERS’, EMPLOYEES’, OR OTHER PERSON DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR FOR WHOSE ACTIONS THEY MAY BE LIABLE) PERFORMANCE OF THE WORK, OR THE OWNERSHIP OR USE OF THE WORK OR ANY PART THEREOF PROVIDED BY CONTRACTOR (OR ANY SUBCONTRACTORS, SUPPLIERS, EMPLOYEES, OR OTHER PERSON DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR FOR WHOSE ACTIONS THEY MAY BE LIABLE); PROVIDED THAT (Y) CONTRACTOR SHALL HAVE NO INDEMNITY OBLIGATIONS HEREUNDER WITH RESPECT TO ANY CLAIM ARISING OUT OF USE OF EQUIPMENT AND MATERIALS IN COMBINATION WITH DEVICES OR PRODUCTS OTHER THAN AS INTENDED IN CONNECTION WITH THE WORK, AND (Z) CONTRACTOR’S INDEMNIFICATION OBLIGATION OTHERWISE SHALL APPLY EVEN IF SUCH LOSSES ARE DUE TO ANY PORT OF HOUSTON AUTHORITY INDEMNITEE’S OWN NEGLIGENCE OR OTHER TORTIOUS CONDUCT, BAD FAITH, ARBITRARY OR CAPRICIOUS CONDUCT, INEQUITABLE CONDUCT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF STATUTE, OR OTHER FAULT,
HOWEVER CHARACTERIZED, OR STRICT LIABILITY WITHOUT REGARD TO FAULT, 
BUT SHALL BE LIMITED TO THE PERCENTAGE OF DAMAGES CAUSED BY THE 
CONTRACTOR’S (OR ANY OF ITS EMPLOYEES’, AGENTS’ OR SUBCONTRACTORS’ 
OF ANY TIER) OWN NEGLIGENCE OR OTHER FAULT, BREACH OF CONTRACT OR 
WARRANTY, BREACH OR VIOLATION OF STATUTE, ORDINANCE, 
GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR STRICT LIABILITY 
WITHOUT REGARD TO FAULT.

SHOULD ANY SUCH LOSSES MATERIALLY IMPAIR CONTRACTOR’S PERFORMANCE OF THE 
WORK OR CONTINUED OPERATIONS THEREOF, THEN CONTRACTOR SHALL, AT ITS OWN 
EXPENSE, TIMELY PROCURE THE RIGHT TO CONTINUE ITS PERFORMANCE OF THE WORK SO 
AS NOT TO MATERIALLY IMPAIR THE CONTRACT TIME OR SUCH CONTINUED OPERATIONS OF 
THE WORK.

11.10 No Estoppel or Waiver:

The Contractor agrees that the Port of Houston Authority shall not be precluded or estopped by 
any action taken or thing done, written or oral, including, but not limited to, inspections made, payments 
made, or final completion of the Work, from showing that the true and correct amount and character of the 
Work done and Equipment and Materials furnished by the Contractor do not in fact conform to the 
Specifications or other Contract Documents. The Contractor also agrees that the Port of Houston Authority 
shall not be precluded or estopped because of any action taken or not taken, from demanding and 
recovering from the Contractor any damages resulting therefrom or from the Contractor’s other failure to 
comply with the Contract Documents.

Furthermore, no action or failure to act by the Port of Houston Authority shall constitute a waiver of 
any right or duty afforded to the Port of Houston Authority under the Contract or otherwise by law, nor shall 
any such action or failure to act constitute acceptance of, approval of or acquiescence in any breach 
thereunder, except as may be specifically agreed to in writing and signed by the Port Contract 
Representative.

11.11 No Election of Remedies:

It is expressly agreed that pursuit by the Port of Houston Authority of any one or more of the 
remedies provided in the Contract Documents or otherwise available at law or in equity shall not constitute 
an election of remedies by the Port of Houston Authority.

11.12 No Interference:

Neither the Port of Houston Authority’s exercise of any of its rights or remedies under the Contract 
Documents (including, without limitation, ordering Changes in the Work, or directing suspension, 
rescheduling, re-execution or correction of the Work), regardless of the extent or frequency of the Port of 
Houston Authority’s exercise of such rights or remedies, nor the Port of Houston Authority’s early 
occupancy, if any, of the Project, nor the Port of Houston Authority’s operations at and around the Site shall 
be construed as a breach, violation of Contractor’s rights, or as interference with the Contractor’s 
performance of the Work or entitle the Contractor to a Claim for additional compensation, whether in the 
form of damages, an adjustment to the Contract Price, or otherwise. Any Claims for an adjustment to the 
Contract Time or that the Contractor is relieved of its obligations to complete the Work within the Contract 
Time shall be asserted in accordance with Section 8.11.
11.13 Notice:

For purposes of the Contract, it is agreed to and understood by the parties that written notice to the Contractor shall be deemed to have been received on the day when such notice is delivered in person or by telefax to the Contractor’s Field Supervisor or the Contractor’s local office. Notices sent by U. S. mail shall be deemed to have been received on the third postal delivery day after the date postmarked on the envelope containing such notice.

Notice to the Port of Houston Authority shall be ineffective unless given in writing and shall be deemed to have been received on the date it is received by the Port Contract Representative (unless the Contract Documents provide that notice be given to another official of the Port of Houston Authority in which case such notice shall be deemed to have been received on the date it is received by such person). Notice to the Port of Houston Authority shall be addressed as follows:

The Port of Houston Authority
ATTN: Port Contract Representative (name and title of the individual designated as such in and pursuant to the Special Conditions)
111 E. Loop North
Houston, Texas 77029-4327

11.14 Contractor’s Qualifications:

In entering into this Contract, Contractor represents and warrants that:

(i) it is financially solvent, able to pay its debts as they mature and possesses a sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

(ii) it has ability, experience and personnel to perform the Work defined herein in accordance with all terms of the Contract Documents, including the Contract Time;

(iii) it can furnish the labor, plant, tools, supplies, and Equipment and Materials required to complete the Work and perform its obligations hereunder;

(iv) it is familiar with all Applicable Laws which may in any way affect the Work or those employed therein, including, but not limited to, any special acts relating to the Work or to the Project of which it is a part;

(v) it is authorized to do business in the State of Texas and properly licensed by all necessary Governmental Authorities and public and quasi-public authorities having jurisdiction over it, the Work and the Site;

(vi) the person executing this Contract on its behalf is duly authorized and empowered to do so and that all formalities necessary for its approval of this Contract have been satisfied;

(vii) it shall strictly comply with and satisfy all legal requirements applicable to the Work; and
(viii) it understands the restrictions imposed on the handling of construction payments received from the Port of Houston Authority pursuant to the State of Texas statutes and that it will fully comply with those provisions in the handling of all payments made by the Port of Houston Authority to the Contractor pursuant to this Contract.

The foregoing representations and warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor’s duties, obligations and performance hereunder. The Contractor’s liability hereunder shall survive the Port of Houston Authority’s final acceptance of and payment for the Work. All representations and warranties set forth in this Contract, including, without limitation, this Section, shall survive the Final Completion of the Work or the earlier termination of this Contract. The Contractor acknowledges that the Port of Houston Authority is relying on these representations and warranties in entering into this Contract with Contractor.

11.15 Entire Agreement:

This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral.

11.16 Severability:

The invalidity, illegality, or unenforceability of any portion, clause or provision of this Contract, or the occurrence of any event rendering any portion, clause or provision of this Contract void, shall in no way affect the validity or enforceability of any other portion, clause or provision of this Contract. Any invalid, illegal, unenforceable or void portion, clause or provision shall be deemed severed from this Contract and the balance of this Contract shall be construed and enforced as if this Contract did not contain the particular portion, clause or provision held to be invalid, illegal, unenforceable or void. The parties further agree that, if requested by a party, the Court shall reform this Contract to replace any stricken portion, clause or provision with a valid portion, clause or provision that comes as close as possible to the intent of the stricken portion, clause or provision. This Section 11.16 shall not prevent the entire Contract from being void should a portion, clause or provision which is the essence of this Contract be determined to be invalid, illegal, unenforceable or void.

11.17 Successors and Assigns:

(a) The Port of Houston Authority and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect of all covenants, agreements and obligations contained in the Contract Documents.

(b) Contractor shall not assign any rights or obligations under or interest in the Contract Documents without the prior written consent of the Executive Director of the Port of Houston Authority or his designee. The Port of Houston Authority may assign its rights and obligations under and interest in the Contract Documents in whole or in part without the consent of Contractor.

11.18 No Third Party Beneficiaries:

The Contract Documents shall not be construed to create any contractual relationship of any kind between the Port of Houston Authority and any Subcontractor or Supplier or between any persons or entities other than the Port of Houston Authority and Contractor. Except as expressly provided herein, none of the provisions of this Contract is intended for the benefit of any other party except for the parties hereto.
11.19 **Change of Control:**

Contractor and any party which holds an equity or voting interest in Contractor shall not sell, assign, convey, encumber or otherwise transfer more than twenty-five percent (25%) of the equity or voting interest, whether it be in the form of stock, partnership interests, membership interests or other unit of ownership, in Contractor without the express prior written consent of the Port of Houston Authority.

11.20 **Governing Law:**

This Contract, its interpretation and any disputes relating to, arising out of or connected with this Contract, shall be governed by the laws of the State of Texas, without regard to its conflict of law provisions.

11.21 **Verification Pursuant to Texas Government Code Chapter 2270 Regarding Boycotting Israel:**

In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (a) does not boycott Israel and (b) will not boycott Israel during the term of the contract. By entering into this contract, Contractor is verifying that it does not boycott Israel, as that term is defined in Section 808 of the Texas Government Code, and Contractor further agrees that it will not boycott Israel during the duration of the Contract. Contractor’s obligations under this subsection, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction, without any further impact on the validating or continuity of this contract.
PORT OF HOUSTON AUTHORITY
SPECIAL CONDITIONS
FOR CONSTRUCTION WORK ON PORT AUTHORITY PROPERTY

1. **Location of Site:**
   The site of the proposed work is within the Port Authority’s BEW 8 DMPA Site. Access to the site is via temporary access road located within easements that are acquired by the Port of Houston Authority.

2. **Port Representatives:**
   The Port Contract Representative is the employee of the Port of Houston Authority having the title of Director, Project & Construction Management.

   The Port Construction Representative for this project is Lori Brownell, PE.

   The Port Authority may change the Port Contract Representative or the Port Construction Representative, and may delegate specified responsibilities of either, to another individual upon written notice to Contractor.

3. **Enumeration of Drawings:**
   The Drawings titled “BW 8 DMPA SITE PREPARATION”, Drawing No. (Use PORT AUTHORITY’S Drawing Nos.), with sheets being subtitled, are set forth on Sheet ____, Rev. ____.

4. **Contract Price:**
   The Contract Price is the fixed price set forth in the Contract.

5. **Weather Days:**
   Pursuant to General Conditions Section 8.11(c), the number of adverse weather days allocated for each month is as set forth below. Contractor shall alert the Construction Manager the first Working Day following an adverse weather event, describing with particularity the critical path activity delayed by the adverse weather event, and shall otherwise comply with the requirements of General Conditions Section 8.11 in order to be entitled to an extension of time for adverse weather. The determination of whether Contractor is entitled to an extension of time as a result of adverse weather will be made each month for the immediately preceding month.

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6. **Water for Construction:**
   Pursuant to General Conditions Section 4.20, water for construction purposes is not available.

7. **Contractor’s Field Office:**
   Notwithstanding General Conditions Section 4.28, Contractor will not be required to furnish a field office building to serve as Contractor’s jobsite headquarters.
8. **Protection of Railroad Traffic:**

Contractor will, during the process of construction, be working on and adjacent to railroad tracks operated by the Port Terminal Railroad Association and/or UPRR. Contractor shall at all times abide by the flagging rules of the Port Terminal Railroad Association and/or UPRR. Contractor shall, during the entire construction period, use such flagging procedures as are deemed necessary for the protection of railroad and vehicular traffic. All Proposers shall familiarize themselves with the flagging rules of said railroad before submitting Proposals.

Whenever from any cause it is necessary to require trains to reduce speed over the construction, Contractor shall display such lights, flags, or other signals as required by the Port Terminal Railroad Association and/or UPRR. Any article, object, excavation, or other things of similar nature that would endanger a person alighting from the side of a railroad car shall be called an "obstruction". Obstructions shall be protected in the same manner as required for speed restrictions. At no time shall an obstruction be placed closer than eight feet, six inches (8'-6") from the center line of the track.

Contractor shall notify the Superintendent of Maintenance of the Port Terminal Railroad Association and/or UPRR CONTACT PERSON well in advance of all conditions that will require special precautions and secure his approval before proceeding with the work.

In case of emergency or unexpected conditions arising, the Contractor shall immediately notify the Superintendent of Track Maintenance of the Port Terminal Railroad Association and/or UPRR CONTACT PERSON.

Maintenance of the Port Terminal Railroad Association and/or UPRR informed at all times of the sequence Contractor shall keep the tracks in a safe condition for the duration of the Contract and shall keep the Superintendent of Track of work.

9. **Sequence of Operations and Access to Work:**

A migratory bird nest and water bird rookery survey must be completed before trees and woody vegetation are removed.

10. **Extended Working Days:**

The Working Day is defined from sun rise to sunset. No nighttime operations are allowed; Contractor shall, pursuant to General Conditions Section 6.03, coordinate construction work hours with the Construction Manager to assure availability of inspection and material testing services. All work must comply with Contract limits for noise.

11. **Baseline Schedule:**

Notwithstanding the requirement in General Conditions Sections 6.04 and 6.05, Contractor shall not be required to provide schedules in critical path format. All schedules may be provided in bar graph form only.
12. Parking: ALLOWABLE ON SITE

13. Field Surveying:

Submittals

Contractor shall submit to the Port Construction Representative the name, address, and telephone number of a Texas Registered Public Land Surveyor (“RPLS”) before starting the Work. The selection of a surveyor shall be subject to the approval of the Port Construction Representative. Contractor shall also submit documentation to the Port Construction Representative verifying the accuracy of the survey work, upon request. Additionally, Contractor shall submit a record drawing to the Port Contract Representative, signed by the Contractor's RPLS, that the elevations and locations of the Work are in conformance with the Contract Documents.

Survey Documentation

Contractor’s RPLS shall maintain a complete and accurate log of control and survey work as it progresses and shall prepare a certified survey setting fourth dimensions, locations, angles, and elevations of construction and Site Work upon completion of foundation walls and major site improvements. Copies of required documentation shall be provided to the Port Construction Representative upon completion of survey work.

Survey Reference Points

Contractor’s RPLS shall locate and protect horizontal and vertical survey control points, identified by the Contract Documents, prior to starting the Work. Additionally, Contractor shall preserve all permanent bench marks during construction. The Port Construction Representative shall be notified immediately of any discrepancies between survey control points identified on the plans and those identified in the field. The Port Construction Representative shall also be notified 48 hours in advance of the need for relocation of bench marks, resulting from changes in grade or other reasons.

Survey Requirements

Two permanent bench marks, referenced to established control points, shall be established by Contractor’s RPLS on site, and their locations, with horizontal and vertical data, recorded and submitted by Contractor as part of the Project record documents. Elevations, lines and levels shall also be established by Contractor’s RPLS to provide both quantities and controls for the Work. Contractor's RPLS shall locate and periodically verify site improvements including pavements, stakes for grading, fill placement, utility locations, slopes, invert elevations, grid or axis for structures, building foundations, column locations, and ground floor elevations by instrumentation and similar appropriate means.

14. Use of Premises:

Disturbance of Site

Contractor shall minimize use of the Enterprise/Stolthaven entrance at Jacintoport Blvd. with material hauling and manipulation equipment so as not to disturb normal traffic. Official Flaggers or off-duty police officers are required to assist the flow of traffic when normal traffic is disturbed.

Pipeline and Utility Easements
Contractor shall acquire all necessary permits and approvals for the use of pipeline and utility easements requiring access during the prosecution of the Work. Contractor shall use the designated easement crossing structures, for all heavy and tracked equipment traffic on and across pipeline easements. Construction of additional easement crossings and additional vehicle or equipment traffic within easement boundaries may be conducted with the express written approval of the easement and utility owners and of the Port Contract Representative. Construction of easement crossing structures shall be at no additional cost to the Port Authority.

**Utility Outages and Shutdown**

Contractor shall notify the Port Authority and private utility companies (when applicable) a minimum of 48 hours, excluding weekends and holidays, in advance of required utility shutdown. Contractor shall coordinate all Work as required.

**END OF SPECIAL CONDITIONS**
PORT OF HOUSTON AUTHORITY

STANDARD TECHNICAL SPECIFICATION

SECTION 01 35 29.00 Std – HEALTH, SAFETY AND
EMERGENCY RESPONSE PROCEDURES

PART 1 GENERAL

1.1 SECTION INCLUDES

Subject to the requirements of the General and Special Conditions, this Section includes; the health, safety and emergency response procedures applicable to work assignments or portions of work assignments carried out under contract to the Port Authority and performed on Port Authority premises as described and specified herein and as shown on the Drawings.

1.2 RELATED SECTIONS

SECTION 01 22 10.00 Std – Measurement of Quantities
SECTION 01 56 13.00 Std – Containment Barriers
SECTION 02 83 33.13 Std – Lead-Based Paint - Engineering Work Practice Controls

1.3 REFERENCES

If work assignments or portions of work assignments carried out under contract to the Port Authority is performed on Port Authority premises, the Contractor, and his/her employees, will comply with:

• All applicable Occupational Safety and Health Administration (OSHA) Standards
• Other federal, state, and local ordinances, statutes, and regulations (including Mine Safety and Health Administration (MSHA) Standards and National Institute of Occupational Safety and Health (NIOSH) Standards)
• Safety procedures followed by the facility owner or operator

1.4 SUBMITTALS

A. Health and Safety Plan (also referred to as Contractor’s Plan):

The Contractor’s Plan shall be consistent with the requirements of:


B. Specifications delineated in this Section are in addition to, or an amplification of, procedures and requirements of the above referenced regulations and guidelines.

C. The Contractor's Plan shall include but not necessarily be limited to, the following components, as appropriate:

1. Information Regarding Characterization of Hazardous Materials
2. Safe Work Practices
3. Engineering Safeguards
4. Medical Surveillance
5. Environmental and Personal Monitoring
6. Personnel Protective Equipment
7. Training
8. Standard Operating Procedures
9. Control and Decontamination
10. Emergency and Contingency Planning
11. Logs and Reports
12. Hazard Communication Program
13. Material Handling
14. Sanitation
The Contractor's Plan shall be approved by signature of a designated representative of the Contracting firm, stating that the plan is in compliance with 29 CFR 1910 and 29 CFR 1926. The signed Contractor's Plan shall be submitted to the Port Authority for review, prior to commencing site work activities.

D. Should any unforeseen or safety related factor, hazard, or condition become evident during the performance of work at this site, it shall be the Contractor's responsibility to bring such to the attention of the Port Authority both verbally and in writing as quickly as possible, for resolution. In the interim, the Contractor shall take prudent action to establish and maintain safe working conditions and to safeguard employees, the public, and the environment in accordance with the Contractor's Plan.

E. Should the Contractor seek relief from, or substitution for, any portion or provision of the Contractor's Plan, such relief or substitution shall be requested of the Port Authority in writing. The requested modification will not be implemented until authorized in writing by Construction Manager.

F. Should the Port Authority modify any portion or provision of the Contractor's Plan, the Construction Manager will notify the Contractor in writing of such modifications.

G. Any disregard for the provision of these Health and Safety requirements shall be deemed just and sufficient cause for termination of the contract without compromise or prejudice to the rights of the Contractor.

H. If the Construction Manager accepts the Contractor's Plan, this plan becomes the responsibility of the Contractor to implement. The Contractor assumes all liabilities.

I. If any Subcontractor adopts the Contractor's Plan, this plan becomes the responsibility of the Subcontractor to implement. The Subcontractor assumes all liabilities.

PART 2 PRODUCTS

2.1 EQUIPMENT

A. The Contractor shall be required to supply all protective clothing and equipment necessary for his/her personnel and maintain it in accordance with the manufacturer's specifications. Such protective clothing and equipment must be in accordance with that specified in the Contractor's Plan. The Site Safety Health and Coordinator shall reject the use of the equipment and if in his/her opinion, it provides less protection than that specified in the Contractor's Plan. All equipment shall be MSHA/NIOSH approved, if applicable. A list of typical equipment ensembles appears below. Specific equipment requirements will be stated in the Contractor's Plan.
Level D

- Work clothing as dictated by weather
- Coveralls
- Hard Hats
- Steel-toes and steel shank safety boots
- Work gloves
- Other protective gear as stated in the Health and Safety Plan

Level C

- Level D protective equipment
- Chemical-resistant coveralls
- Disposable outer boots, or chemically resistant outer boots
- Full face or half-face air purifying respirator equipped with the appropriate cartridge
- Outer gloves
- Inner gloves
- Other protective gear as stated in the Health and Safety Plan

Level B

- Level C protective clothing
- Pressure demand self-contained breathing apparatus (SCBA)
- Chemical-resistant splash suit
- Other protective gear as stated in the Health and Safety Plan

Level A

- Level B equipment and clothing
- Long cotton underwear
- Fully encapsulating chemical resistant suit
- Other protective gear as stated in the Health and Safety Plan

B. All prescription eyeglasses for on-site use shall be safety glasses. Prescription lens inserts shall be provided for employees who need to wear full face respirators. Contact lenses are prohibited inside respirators.
C. Contractor's personnel shall not enter an area or perform a task for which a respirator might be required unless they have passed a fit test with the make and model of respirator in use.

D. All on-site personnel shall wear a hard hat at all times.

E. All personal protective equipment worn on-site will be properly disposed of at the end of the work day.

F. Respirators shall not be interchanged between workers without cleaning and sanitizing. Canisters and filters shall be changed daily or upon breakthrough, whichever occurs first.

G. All safety clothing including work clothing and safety boots which have entered the work zone shall be properly decontaminated or disposed of, when appropriate.

PART 3 EXECUTION

3.1 WORK ON HAZARDOUS MATERIAL OPERATIONS

A. The nature of these materials is anticipated to require the use of protective clothing and respiratory protective equipment to minimize worker exposure to known or suspected hazards. The appropriate level of protection and safety procedures for personnel shall be stated in a Contractor's Health and Safety Plan. The Contractor's Health and Safety Plan shall hereafter be designated as the Contractor's Plan. The Contractor's Plan shall be prepared by the Contractor in accordance with 29 CFR 1910.120 and submitted for approval by Port Authority prior to initiation of work.

The contractor and his employees and subcontractors shall implement and maintain these procedures prior to and during performance of the work, unless specifically exempted.

B. Use of the protective equipment and procedures specified in the Contractor's Plan will require personnel who are trained and medically approved by a physician for the specific work assignment, as stated in the regulations and guidelines referenced. The Contractor is required to supply only trained and medically approved personnel. A designated representative of the Contractor is required to certify that the personnel meet the referenced regulations and guidelines.

C. All personnel either in or adjacent to the work zone shall wear, at minimum, the protective equipment corresponding to the level of protection directed by the Site Health and Safety Coordinator (SHSC), as stated in the Contractor's Plan.
3.2 MEDICAL SURVEILLANCE

A. The Contractor shall utilize the services of a physician to provide medical surveillance as required by OSHA regulations. The name of the physician and evidence of examination of all Contractor personnel shall be provided to the Construction Manager prior to assigning these personnel on-site. The physician will certify that each individual is medically qualified to use respiratory protective devices for the stated work assignment.

B. The physician's certification of each Contractor staff member involved in this project shall be provided to Port Authority prior to commencing work. The certificate must bear the name of the employee and the signature of the physician.

C. Medical surveillance protocol is the responsibility of the Contractor's physician but certification shall be provided that such medical surveillance meets the requirements of OSHA Standards 29 CFR 1910.134 and 29 CFR 1910.120 for all personnel. The following protocol is provided as an example of those common in this industry. The protocol shall be modified at the discretion of the attending physician, as appropriate for the stated work assignment:

- Medical History
- General Physical
- Pulmonary Function Examination
- Electrocardiogram
- Stress Test (optional)
- Chest X-Ray (optional)
- Audiometric Examination
- Visual Acuity Examination
- Otoscopic Examination
- Blood Tests, Blood Count, Blood Profile – 25 Channel
- Urinalysis and Urine Heavy Metals
- Update of Vaccinations
- Additional tests may be included at the discretion of the attending physician performing the physical examination.
D. Periodic surveillance examinations may be required. The following schedule is required by 29 CFR 1910.120 but may be modified by the attending physician, as appropriate for the stated work assignment:

1. Annual medical examinations for all employees participating in medical surveillance program.
2. Medical examinations following an acute exposure to any toxic or hazardous material, or after an injury.
3. Medical examinations upon the recommendation of the examining physician.
4. Medical examinations at the termination of site activities.

Periodic surveillance examinations shall be at the discretion of the attending physician.

The physician shall also determine if Contractor personnel require an examination at the completion of their involvement in work activities.

3.3 TRAINING

Contractors are responsible for providing training in health and safety procedures as specified in the OSHA regulations.

The Contractor shall submit a statement indicating that personnel to be within the work zone understand they are working on a site/operation that may contain hazardous materials or hazardous wastes and are trained and qualified in compliance with 29 CFR 1910 and 29 CFR 1926.

3.4 PERSONAL HYGIENE

A. Eating, drinking, chewing gum or tobacco, smoking, or any practice that increases the probability of hand-to-mouth transfer and ingestion of material is prohibited in any area designated contaminated.

B. Hands and face shall be thoroughly washed upon leaving the work area and before eating, drinking, or any other activities.

C. Whenever a decontamination procedure for protective clothing is in effect, the entire body shall be thoroughly washed as soon as possible after the protective clothing is removed.

D. No facial hair which interferes with a satisfactory fit of a respiratory mask-to-face-seal is allowed on personnel required to wear respiratory protective equipment. A “one-day” growth of beard is considered to interfere with the fit of the respirator.
E. Medicine and alcohol can increase the effects of exposure to toxic chemicals. Personnel using prescription drugs shall inform the doctor who prescribed them of their potential contact with toxic materials. Personnel who take over-the-counter drugs within a day before work on a site must inform the SHSC of the warnings listed on the drug's container (the part of the label that says, for example, "Do not take this medication if you are operating a motor vehicle"). Alcoholic beverage intake will be prohibited during project operations. Personnel under the influence of alcohol or recreational or illegal drugs will not be allowed on site.

3.5 AMBIENT AIR MONITORING

Air monitoring for pollutants of concern will be performed by the Contractor as specified in the Contractor's Plan. Explosion Meters, photoionization detectors, organic vapor analyzers, and additional appropriate equipment may be used to measure and assess chemical exposure. Specific use of instruments to monitor worker exposures shall be defined in the Contractor's Plan and will be reviewed at the health and safety briefing.

3.6 SITE HEALTH AND SAFETY COORDINATOR (SHSC)

It shall be the responsibility of the Contractor's Site Health and Safety Coordinator (SHSC) or duly authorized representative to ensure that all health and safety requirements are implemented. The SHSC will have control over the safe execution of the contract while in progress. Should he/she determine that the working conditions are unsafe, the SHSC can terminate the work at his/her discretion. The SHSC is charged with overseeing site health and safety, instrument monitoring, personnel decontamination, control of contaminated material, emergency response measures, and other activities, as specified in the Contractor's Plan.

3.7 ACCIDENT REPORTING AND EMERGENCIES

The Contractor shall immediately report to the Port of Houston Authority’s Police Department at telephone number (713) 670-3611 and the Construction Manager Construction Manager of the Port of Houston Authority any jobsite accident, injury, illness, or environmental release. The Contractor shall submit to the Construction Manager Construction Manager as soon as possible but no later than two (2) Working Days thereafter, a full written report giving the date, time, location, description (in a degree of detail acceptable to the Construction Manager Construction Manager), and personnel involved. Such report shall be signed by Contractor's designated SHSC.

In an emergency affecting safety of persons or property, the Contractor shall immediately notify the Port of Houston Authority’s Police Department at telephone number (713) 670-3611 and the Construction Manager Construction Manager of the Port of Houston Authority and undertake such acts as are necessary, at the Contractor's discretion, to prevent threatened damage, injury or loss.

END OF SECTION
PORT OF HOUSTON AUTHORITY

STANDARD TECHNICAL SPECIFICATION

SECTION 01 56 13.00 Std – CONTAINMENT BARRIERS

PART 1 GENERAL

1.1 SECTION INCLUDES

Subject to the requirements of the General and Special Conditions, this Section includes; the furnishing and installing of a total containment enclosure around the immediate work area to contain and collect debris generated during coating removal operations and to capture particulates released during the coating process as described and specified herein and as shown on the Drawings.

1.2 RELATED SECTIONS

SECTION 01 22 10.00 Std – Measurement of Quantities
SECTION 01 35 33.11 Std – Health, Safety and Emergency Response Procedures
SECTION 02 83 33.16 Std – Lead-Based Paint – Engineering and Work Practice Controls
SECTION 09 91 13.00 Std – Miscellaneous Exterior Painting
SECTION 09 96 00.00 Std – High Performance Coating
SECTION 09 96 00.13 Std – Crane Painting
SECTION 09 96 56.01 Std – Epoxy Coatings–Coal Tar

1.3 REFERENCES

A. SSPC [previously: Steel structures Painting Council; now: Society for Protective Coatings] Guide 6, for Class 4 or better containment.

B. OSHA Standards

1.4 SUBMITTALS

A. Prior to fabrication, the design and installation of the containment enclosure shall be submitted for review and approved by the Chief Construction Manager.

B. Materials and equipment as described in the PRODUCTS section below shall be selected by the Contractor and reviewed by the Chief Construction Manager.

PART 2 PRODUCTS

2.1 CONTAINMENT ENCLOSURE

The containment enclosure provided shall meet the requirements set forth in SSPC Guide 6, for Class 4 or better containment. It shall generally be constructed of tarpaulins, covers, and other flexible materials, with entry into the work area made through an open seam. Ventilation inside the enclosure may be by natural means. Air filtration of exit air is not required.

2.2 CONSTRUCTION OF SUPPORT STRUCTURE

A support structure, if necessary, providing support for personnel, equipment, construction and containment materials and spent blast media and debris shall be used as a framework for the enclosure. Rigid or flexible materials may be used to construct the containment enclosure.
Rigid materials shall be impermeable, fire retardant and shall be comprised of plywood panels, or corrugated panels of steel, aluminum, or reinforced fiberglass.

Flexible materials shall be fire retardant. Flexible materials for walls may be air penetrable (woven but able to retain airborne particles).

PART 3 EXECUTION

3.1 CONTAINMENT

The work associated with construction, dismantling and moving the enclosure to new locations as the coating removal and new coating operations progress and with removing the enclosure when coating operations are completed is the responsibility of the Contractor. Where the coating removal and coating application is being conducted in the splash zone, or near the water, special care will be provided to keep water from entering the containment.

The containment enclosure shall be used to confine spent materials, aerosols, dust and other debris generated:

(i) during abrasive blasting operations
(ii) when vacuuming the steel surfaces on the structure in preparation for coating application
(iii) when collecting and removing debris and
(iv) when applying the new coating

The performance of the containment enclosure will be judged on its ability to prevent visible emissions or releases of spent materials, dust or other debris into the environment and the entrance of water into the enclosure.

3.2 WORKER PROTECTION

Appropriate Personal Protective Equipment will be provided to all project personnel in accordance with applicable OSHA standards.

3.3 REMOVAL AND APPLICATION WORK

All cleaning, coating removal and coating application work shall be performed inside the containment enclosure. Extreme care shall be taken to prevent emissions (releases) of waste materials or entrance of water when cleaning, coating removal and coating application work is being performed, and especially near joints that are formed between the enclosure and the structure, seams in the structure, seams in the enclosure materials and any areas at or near the splash zone/water interface. The Contractor shall make every attempt to limit workers from entering or exiting the containment enclosure when cleaning, coating removal and coating application operations are being performed.

3.4 CLEANING

A. All waste material that results from coating removal and application operations shall be cleaned and collected from the floor, walls, and other surfaces inside the containment enclosure by vacuuming, sweeping, shoveling, or other mechanical means to remove the existing waste materials from the coating area, provided no material is released to the environment. Clean up operations shall be performed daily, before new coating is applied, or before a prolonged work stoppage, such as for weather interruptions.

B. Prior to disassembly or moving of the containment enclosure, the inside surfaces of the enclosure (walls, floors, ceiling, etc.) shall also be cleaned of dust and other spent material by vacuuming. The Contractor shall take all measures necessary to prevent the release of waste material during moving or removal of the containment.
C. Any material that is released outside the containment enclosure shall be immediately cleaned up using vacuums or other methods satisfactory to the Port Authority. Care shall be taken on pavement or other surfaces to collect all such waste material so as to prevent it from being redistributed into the air and environment by traffic.

D. All vacuum equipment that is used for collection and clean-up work shall be equipped with high efficiency particulate (HEPA) filters.

E. The Chief Construction Manager may direct the Contractor to stop all work activities and require the Contractor to immediately clean up all waste materials within the enclosure when in the Chief Construction Manager’s opinion, threatening weather conditions exist. This measure may be exercised when an apparent threat exists that could cause the release of material to the surrounding environment such as high winds, heavy rain, high tides or splashing from high waves. Additionally, the Chief Construction Manager may direct the Contractor to stop all work as required for operational use of the wharf.

F. Following abrasive blasting, all surfaces inside the containment area shall be vacuumed daily, or as required to remove all debris in preparation of coating application.

END OF SECTION
PORT OF HOUSTON AUTHORITY

STANDARD TECHNICAL SPECIFICATION

SECTION 01 56 26.00 Std - REINFORCED SILT FENCING

PART 1  GENERAL

1.1  SECTION INCLUDES

Subject to the requirements of the General and Special Conditions, this Section includes; the installation of Reinforced Filter Fabric Barrier as an erosion and sedimentation control which shall be utilized as a part of the Storm Water Pollution Prevention Practices Plan (SWPPP), during construction and prior to the final development of the site as described and specified herein and as shown on the Drawings.

1.2  RELATED SECTIONS

SECTION 01 22 10.00 Std – Measurement of Quantities
SECTION 01 57 23.13 Std – Temporary Storm Water Controls

1.3  REFERENCES

A. ASTM International Publications, latest revision:
   ASTM D-3786  Standard Method for Bursting Strength of Textile Fabrics – Diaphragm Bursting Strength Tester Method
   ASTM D-4491  Standard Test Methods for Water Permeability of Geotextiles by Permittivity

C. PHA Municipal Separate Storm Sewer System (MS4) Permit

1.4  SUBMITTALS


1.5  HANDLING AND STORAGE

NOT USED

PART 2  PRODUCTS

2.1  REINFORCED FILTER FABRIC BARRIER

A. Provide woven geotextile filter fabric made of polypropylene, polyethylene, ethylene, or polyamide material.
   1. Geotextile fabric shall have minimum grab strength of 100 psi in any principal direction (ASTM D 4632).
3. Equivalent opening size between 50 and 140 for soils with more than 15 percent by weight passing a No. 200 sieve and between 20 and 50 for soils with less than 15 percent by weight passing a No. 200 sieve.
4. Maximum water flow rate of 40 gallons per minute per square feet (ASTM D 4491).
5. Filter fabric material shall contain ultraviolet ray inhibitors and stabilizers to provide a minimum of six months of expected usable construction life at a temperature range of 0°F to 120°F.

B. Acceptable Manufacturers:
   1. Marifi, Inc.
   2. Or approved substitution.

C. Woven wire shall be galvanized 2" x 4" welded wire fabric, 12-1/2 gauge.
D. Metal stakes (T Posts).

PART 3  EXECUTION

3.1 GENERAL
   A. Provide erosion and sedimentation control systems at the locations shown in the Drawings. Such systems shall be of the type indicated and shall be constructed in accordance with the requirements shown on the Drawings and set out in this Section of the specifications. Reinforced filter fabric barrier design shall be based on guidelines provided in the Storm Water Management Handbook for Construction Activities (Latest Edition) prepared by the Storm Water Management Joint Task Force, or other industry-standard document approved by the Chief Construction Manager.

   B. No clearing and grubbing or rough cutting, other than as specifically directed by the Chief Construction Manager, to allow soil testing and surveying, shall be permitted until erosion and sedimentation control systems are in place.

   C. Install and maintain erosion and sedimentation control systems located within the project site prior to the start of construction under this Contract until final site stabilization or until approval is received from the Chief Construction Manager to remove and discard the existing system.

   D. Inspect and repair or replace components of all erosion and sedimentation control systems as specified for each type of system. Unless otherwise directed, maintain the erosion and sedimentation control systems until final site stabilization. Remove erosion and sedimentation control systems promptly upon approval of the Chief Construction Manager. Discard removed materials offsite.

   E. All sediment generated during construction will remain on the Project site. Sediment should be spread, compacted and stabilized in accordance with the Port of Houston Authority Municipal Separate Storm Sewer System (MS4) Permit Program. Sediment shall not be allowed to flush into stream or drainage way. If any contaminated sediment is encountered, the Contractor shall notify the Chief Construction Manager.

   F. Damages caused by construction traffic to erosion and sedimentation control systems shall be repaired immediately.

   G. Conduct all construction operations under this Contract in conformance with erosion control practices described in the Project Storm Water Pollution Prevention Plan, or Best Management Practices Plan.

3.2 CONSTRUCTION METHODS
A. Provide filter fabric barrier systems at locations specified on the Drawings. Reinforced filter fabric barrier systems shall be installed in such a manner that surface runoff will percolate through the system in sheet flow fashion and allow sediment to be retained and accumulated.

B. Attach the woven wire support to steel fence posts (minimum of 1.25 lbs. per linear foot and Brinell hardness greater than 140) spaced 6 feet (maximum) apart and embedded a minimum of 1 foot. Maximum spacing of 8 feet is allowed if posts are made of hot rolled steel, at least 4 feet long with Tee or Y-Bar sections with the surface painted or galvanized. Provide safety caps on top of metal posts. The steel posts shall be installed at a slight angle toward the source of the anticipated runoff.

C. Trench in the toe of the filter fabric barrier with a spade or mechanical trencher so that the downward face of the trench is flat and perpendicular to the direction of flow as shown on the attached drawings. Trench shall be a minimum of 6-inch by 6-inch. Lay filter fabric along the edges of the trench. Backfill and compact trench.

D. The filter fabric should be provided in continuous rolls and cut to the length of the silt fence to minimize the use of joints. When joints are necessary, the fabric should be spliced together only at a support post with a minimum 6-inch overlap, and sealed securely.

E. When used in swales, ditches, or diversions, the elevation of the barrier at the top of the filter fabric at the flow line location in the channel shall be lower than the bottom elevation of the filter fabric at the ends of the barrier or the top of bank, whichever is less, in order to keep storm water discharge in the channel from overtopping the bank.

F. Inspect sediment filter barrier systems after each rainfall of 0.5 inches or greater, and daily during periods of prolonged rainfall, and at a minimum once a week. Repair or replace damaged section immediately to restore the requirements of this section. Remove sediment deposits when silt reaches one-third of the height of the barrier in depth.

END OF SECTION
PORT OF HOUSTON AUTHORITY
STANDARD TECHNICAL SPECIFICATION

SECTION 01 57 23.13 Std – TEMPORARY STORM WATER CONTROLS

PART 1 GENERAL

1.1 SECTION INCLUDES

Subject to the requirements of the General and Special Conditions, this Section includes; the installation of erosion and sediment controls during construction activities as shown on the plans, and as described in the construction Storm Water Pollution Prevention Plan (SWP3), which ensures that project complies with the Port of Houston Authority Municipal Separate Storm Sewer System (MS4) Permit Program as described and specified herein and as shown on the Drawings.

All construction activities which disturb an area equal to or greater than one (1) acre of land and are performed on Port of Houston property must be in compliance with the Texas Pollutant Discharge Elimination System (TPDES) General Permit (TXR 150000) for Storm Water Discharges Associated with Construction Activities as required by the Port of Houston Authority’s MS4 Permit.

In situations where construction activities disturb an area less than one (1) acre, where the coverage under Texas Pollutant Discharge Elimination System (TPDES) General Permit and a Storm Water Pollution Prevention Plan (SWP3) is not required, Best Management Practices (BMP) Plan is required.

1.2 RELATED SECTIONS

SECTION 01 22 10.00 Std – Measurement of Quantities
SECTION 01 56 26.00 Std – Reinforced Silt Fencing
SECTION 31 23 00.00 Std – Excavation and Fill

1.3 REFERENCES

A. Texas Pollutant Discharge Elimination System (TPDES) General Permit

B. ASTM International Publications, latest revision:

   ASTM D-3786 Standard Method for Bursting Strength of Textile Fabrics Diaphragm Bursting Strength Tester Method


D. Compliance with all applicable and appropriate local, state and federal waste disposal and sanitary sewer regulations.
1.4 SUBMITTALS

A. As applicable, Storm Water Pollution Prevention Plan (SWP3) or Best Management Practices (BMP) Plan.

B. Product Data for materials used in Inlet Protection Barriers and Filter Fabric Fence.

C. Material Safety Data Sheets (MSDS) for all materials brought on site.

D. Notice of Intent: (If applicable)

The Contractor will submit PHA reviewed Notice of Intent (NOI), with the applicable fee to the Texas Commission on Environmental Quality (TCEQ), as a requirement of the General TPDES Permit for Storm Water Discharges associated with Construction Activities. Before submitting to the TCEQ, the Contractor shall submit the “Draft” NOI to the Port Authority for review and approval.

The Contractor, along with its subcontractors, will be required to certify that the terms and conditions of the General TPDES Permit are understood and being implemented.

The Construction Manager will coordinate all submittals with the Contractor for the TPDES General Permit.

E. Notice of Termination (if applicable):

The Contractor will submit a Notice of Termination (NOT) to the Texas Commission on Environmental Quality and a copy to the Port Authority (as the MS4) within 30 days, after final stabilization has been achieved on all portions of the site, or another permitted operator has assumed control over all areas of the site that have not been finally stabilized, and all silt fences and other temporary erosion controls have been either removed or transferred to a new operator if the new operator has attained permit coverage before submitting to the TCEQ, the Contractor shall submit the “Draft” NOT to the Port Authority for review and approval.

1.5 HANDLING AND STORAGE

Drums, Fuel and Chemical Storage:

An impoundment shall be constructed to hold all drums, aboveground fuel tanks, chemicals and fuel. The area will be lined with visqueen and have a volume of at least 150 percent of the capacity of all containers within its bounds.

A 4-inch sand layer shall be placed on the top of the visqueen in order to stabilize it and minimize the damage to the liner. The Contractor should refer to manufacturers warnings and MSDS to prevent storing materials together that, when mixed, are a hazard. If this potential exists, multiple impoundments should be constructed.

The impoundment shall be covered to protect the area from precipitation. The area may be covered by a method of the Contractor’s choice. The cover should extend over the edge of the impoundment half the distance of the cover height; if the cover is 7 feet above the impoundment, the edges should extend 3.5 feet horizontally over the edges of the impoundment.
PART 2 PRODUCTS

2.1 INLET PROTECTION BARRIERS

A. Filter Fabric Fence:

Provide a woven or non-woven geotextile filter fabric made of polypropylene, polyethylene, ethylene, or polyamide material. Geotextile fabric shall have a grab strength of 100 psi in any principal direction (ASTM D-4632), Mullen burst strength exceeding 200 psi (ASTM D-3786), and the equivalent opening size between 50 and 140 for soils with more than 15 percent by weight passing a No. 200 sieve and between 20 and 50 for soils with less than 15 percent by weight passing a No. 200 sieve.

Filter fabric material shall contain ultraviolet ray inhibitors and stabilizers to provide a minimum of six months of expected usable construction life at the temperature range of 0 degree F to 120 degrees F. Representative Manufacturers: Marifi, Inc. or equal.

B. Straw Bales:

Straw bales will be used to prevent sediment and other pollutants from entering the Storm Sewer. Straw bales will also be used to prevent sediment and other pollutants from entering the proposed junction boxes during construction.

Straw bales shall be wither-wire bound or tied with nylon or polypropylene rope. Cotton binding is not allowed. Straw bales shall be installed so that bindings are oriented around the sides rather than along the tops and bottoms of the bales to prevent degradation of the bindings.

Straw bales deteriorate with time and shall be replaced when no longer effective.

2.2 SEDIMENT BASINS

Sediment Basins are required, where feasible, for common drainage locations that serve an area with ten (10) or more acres disturbed at one time, a temporary sediment basin that provides storage for a calculated volume of runoff from a minimum of a 2-year, 24-hour storm event from the drainage area.

PART 3 EXECUTION

3.1 PREPARATION

A. Stabilization Practices:

Staging and parking areas will be stabilized by the Contractor using a coarse aggregate.

B. Offsite Vehicle Tracking:

The contractor will minimize offsite vehicles onto the site and minimize the generation of dust. On site vehicle wash downs are prohibited.

A stabilized site entrance shall be in place to reduce the tracking of sediments.
C. Sequence of Major Erosion and Sediment Control Activities:

All of the structural controls, including the inlet protection barriers, filter fabric fence and sediment basins, should be installed prior to construction.

No excavation or grading shall be permitted until erosion and sedimentation control systems are in place.

Projects should be staged to minimize the disturbed area, as practical.

D. Good Housekeeping:

As practicable, the site will be maintained in an orderly manner. Routine site housekeeping in accordance with acceptable industry practices will be conducted on a regular basis.

3.2 INSTALLATION/CONSTRUCTION

A. Inlet Protection Barriers:

Install inlet protection barriers of the type specified on the construction drawings.

B. Filter Fabric Fence:

Provide filter fabric fence systems at locations specified on construction drawings. Filter fabric fence systems shall be installed in such a manner that surface runoff will percolate through the system in sheet flow fashion and allow sediment to be retained and accumulated.

Attach the filter fabric to 1 inch by 2 inch wooden stakes spaced a maximum of 3 feet apart and embedded a minimum of 18 inches. The wooden stakes shall be installed at a slight angle toward the source of anticipated runoff.

The filter fabric should be provided in continuous rolls and cut to the length of the fabric to minimize the use of joints. When joints are necessary, the fabric should be spliced together only at a support post with a minimum 6-inch overlap and sealed securely.

C. Sediment Basins:

Construction of the sediment basin will be performed by excavation or the erection of an earthen embankment across a low area or drainage swale. The design specification will be provided on the Construction Drawings.

3.3 INSPECTION, MAINTENANCE AND REPAIR

Inspect and repair or replace components of all erosion and sedimentation control systems as specified for each type of system. Unless otherwise directed, maintain the erosion and sedimentation control systems until the project is accepted by the Construction Manager. Remove erosion and sedimentation control systems promptly when directed by the Construction Manager. Discard removed materials offsite at an approved disposal location.
A. Inspect inlet protection barriers after each rain, daily during period of prolonged rainfall, and at a minimum once a week. Repair or replace damage barrier components to restore the requirements of this Item. Remove sediment deposit when the sediment has accumulated to one third the heights of the barrier.

B. Inspect sediment filter barrier systems after each rainfall, daily during periods of prolonged rainfall, and a minimum of once a week. Repair or replace damage section immediately to restore the requirements of this Item. Remove sediment deposits when silt reaches one-third of the height of the fence in depth.

C. Damages caused by construction traffic to erosion and sedimentation control system shall be repaired immediately.

3.4 INSPECTION REPORTS

A. The Contractor will designate a qualified person or persons to perform the following inspections:

1. Disturbed areas and areas used for storage of materials that are exposed to precipitation will be inspected for evidence of, or the potential for pollutants entering the drainage system.

2. Erosion and sediment control measures identified in the plan will be visually inspected to ensure that they are operating correctly.

3. Where discharge locations or points are accessible, they will be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters.

4. Locations where vehicles enter or exit the site will be inspected for evidence of offsite sediment tracking.

    The inspection will be conducted by the responsible person at least once every 14-calendar days and within 24 hours after a storm event of 0.5 inch or greater.

    After a portion of the site is finally stabilized, inspection will be conducted at least once every month.

B. Based on the results of the inspection, the control measures in the storm water pollution prevention plan will be revised as appropriate, but in no case later than 7 calendar days following the inspection.

C. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with Paragraph B above will be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. The report will be signed in accordance with Title 30 of the Texas Administrative Code Section 305.128.

D. Copies of the forms to be used for the Inspection and Maintenance Report are included at the end of this Section.
E. Maintenance:

The maintenance and repairs of the erosion and sediment controls will be conducted within 24 hours of the inspection reports. Sediment will be removed from behind the sediment fences and the inlet protection barriers when it becomes about 1/3 the height of the fence. Sediment must be removed from the sediment basin(s) when design capacity is reduced by 50 percent.

3.5 OTHER CONTROLS

A. Materials Brought On-Site:

The Contractor will provide the Port Authority with copies of Material Safety Data Sheets (MSDS) for all materials brought on site. Materials will be managed appropriately in consideration of the MSDS.

B. Waste Materials:

1. Trash and Debris:

   All waste will be collected and stored on site. Construction debris, trash and any construction chemicals will be stored in a manner that prevents them from potentially impacting the quality of rainfall discharged from the site. Trash and debris will be hauled to an approved landfill regularly, as necessary.

2. Hazardous Waste:

   The contractor is not allowed to bring any hazardous waste on site that has not been generated directly as a result of the construction activity authorized by the Port Authority.

   Any hazardous waste generated directly as a result of the construction activity authorized by the Port Authority will be stored inside a visqueen lined impoundment. Collected hazardous wastes will be appropriately managed complying with all local, state, and federal environmental regulations and requirements.

   Spill practices will adhere to industry standards for spill response. Collected spill materials, if any, will be managed appropriately including but not limited to proper handling, proper labeling of drums, proper disposal of materials, and proper reporting and recordkeeping.

3. Sanitary Waste:

   All sanitary waste will be regularly collected from the portable units by a licensed sanitary waste management contractor.
4. Offsite Vehicle Tracking:

The contractor will minimize offsite vehicle traffic onto the site and minimize the generation of dust. On site vehicle wash downs are prohibited.

A stabilized site entrance is in place to reduce the tracking of sediments.

5. Concrete Washout Controls

When it is required to have a concrete washout area it shall be a lined concrete washout pit which is cleaned out and maintained throughout the term of the project.

6. Compliance with State and Local Regulations:

The proposed project will be in compliance with all applicable and appropriate local, state and federal waste disposal and sanitary sewer regulations.

3.6 COMPLETION

A. All erosion and sediment control systems should be removed only after the project has been completed or final stabilization has been achieved on all portions of the site. Generally, final stabilization is achieved when all soil disturbing activities at the site have been completed and a 70 percent uniform perennial vegetative cover has been established on all unpaved areas or equivalent permanent stabilization measures have been employed.

Removal of the erosion and sediment control systems should be done with the concurrence of the Construction Manager.

Erosion controls that are designed to remain in place for an indefinite period, such as mulches are not required to be removed.

B. The impoundment should be removed only after materials are no longer stored onsite.
### STORM WATER POLLUTION PREVENTION PLAN
### INSPECTION AND MAINTENANCE REPORT
### OTHER CONTROLS
### STABILIZED CONSTRUCTION ENTRANCE/STAGING AREA:

<table>
<thead>
<tr>
<th>HOW MUCH SEDIMENT GETS TRACKED ONTO ROAD?</th>
<th>ENTRY SURFACE CLEAN OR SEDIMENT FILLED?</th>
<th>DOES ALL TRAFFIC USE ENTRANCE?</th>
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### MAINTENANCE REQUIRED FOR STABILIZED CONSTRUCTION ENTRANCE/STAGING AREA:

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TO BE REPORTED BY: __________  ON OR BEFORE: __
STORM WATER POLLUTION PREVENTION PLAN
INSPECTION AND MAINTENANCE REPORT

CHIEF CONSTRUCTION INSPECTOR: _

DAYS SINCE LAST RAINFALL: ______

DATE: ________________

AMOUNT OF LAST RAINFALL: _______ INCHES

STABILIZATION MEASURES

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<tr>
<th>DATE SINCE LAST DISTURBED</th>
<th>DATE OF NEXT DISTURBANCE</th>
<th>STABILIZED?</th>
<th>STABILIZED WITH</th>
<th>CONDITION</th>
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STABILIZATION REQUIRED:

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TO BE REPORTED BY: ___________ ON OR BEFORE: _
### Inlet Protection Barriers

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<tr>
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<th>Depth of Sediment</th>
<th>Condition of Inlet</th>
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## Maintenance Required for Inlet Protection Barrier:

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To be reported by: __________  On or before: __

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STORM WATER POLLUTION PREVENTION PLAN
INSPECTION AND MAINTENANCE REPORT
STRUCTURAL CONTROLS
INLET PROTECTION BARRIERS:

STANDARD TECHNICAL SPECIFICATION
Revision Date: September 2017
01 57 23.13 Std
Page 10
TEMPORARY STORM WATER CONTROLS
**FILTER FABRIC FENCE:**

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>BOTTOM OF FABRIC STILL BURIED?</th>
<th>FABRIC TORN OR SAGGING?</th>
<th>POST TIPPING OVER?</th>
<th>HOW DEEP IS THE SEDIMENT?</th>
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MAINTENANCE REQUIRED FOR SILT FENCE:

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TO BE REPORTED BY: __________ ON OR BEFORE:   

STANDARD TECHNICAL SPECIFICATION
Revision Date: September 2017
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Page 11
TEMPORARY STORM WATER CONTROLS
STORM WATER POLLUTION PREVENTION PLAN
INSPECTION AND MAINTENANCE REPORT
CHANGES REQUIRED TO THE POLLUTION PREVENTION PLAN:

________________________________________________________________________
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REASONS FOR CHANGES:

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________________________________________________________________________

CONSTRUCTION MANAGER’S SIGNATURE: ____________________________
DATE: __________________________

END OF SECTION
PORT OF HOUSTON AUTHORITY

STANDARD TECHNICAL SPECIFICATION

SECTION 02 83 33.13 Std - LEAD-BASED PAINT, MATERIAL AND DEBRIS - ENGINEERING AND WORK PRACTICE CONTROLS

PART 1  GENERAL

1.1  SECTION INCLUDES

Subject to the requirements of the General and Special Conditions, this Section includes; worker and environmental protection regarding lead-based paint as described and specified herein and as shown on the Drawings.

1.2  RELATED SECTIONS

SECTION 01 22 10.00 Std – Measurement of Quantities

SECTION 01 35 29.00 Std - Health, Safety and Emergency Response Procedures

SECTION 01 56 13.00 Std - Containment Barriers

1.3  REFERENCES

A. OSHA Construction Industry Lead Standard, 29 CFR 1926.62, referred to as the “lead standard”


C. All other OSHA, EPA and State regulations specific to this project and Port Authority requirements that follow.


E. American Industrial Hygiene Associations.

1.4  SUBMITTALS

A. Technical Manual Section V: Chapter 3 “Controlling Lead Exposures in the Construction Industry: Engineering and Work Practice Controls” shall be used as the resource for development of the contractor written program.

B. The Contractor shall submit outlines of the programs described in this section (worker, environmental, and waste) and a conceptual containment design if needed. Sufficient details shall be included to demonstrate the Contractor’s ability to comply with the requirements of this specification and all applicable Federal, State and local standards and regulations.
C. The Contractor shall submit written programs (includes Site Health and Safety Plans) for worker protection, environmental protection, and waste handling, to the Port Authority, for review and approval. Notwithstanding the Port Authority’s review and acceptance of the programs, the Contractor remains solely responsible for the adequacy and completeness of the programs and adherence to them. Detailed programs design must meet the requirements found in the OSHA Construction Industry Lead Standard, 29 CFR 1926.62, referred to as the “lead standard” and all other OSHA, EPA and State regulations specific to this project and Port Authority requirements that follow.

D. Prior to the removal of any lead containing material or debris, the waste disposal facility and/or recycling facility must be reviewed by the PHA Environmental Affairs Department. Information regarding the disposal facility and/or recycling facility must be provided to the PHA Environmental Affairs Department at least 10 business days prior to the anticipated removal date.

E. Waste manifests must be signed by an employee from the PHA if the material is being sent to a disposal facility. If the material is being sent to a recycling facility, a “waste manifest” is not required. (The material is not considered “waste” if it is being recycled.) However, documentation regarding the amount of material removed, the type of material removed, the party removing the material, the party receiving the material, and the date and time of material removal from PHA property must be provided in writing to the PHA Environmental Affairs Department.

F. Waste manifests are to be submitted to the Environmental Affairs Department. Shipping papers and bill of lading from approved disposal facilities and/or recycling facilities must be submitted to the Environmental Affairs Department.

1.5 HANDLING AND STORAGE

NOT USED

1.6 DEFINITIONS

A. Action Level: Employee exposure, without regard to the use of respirators, to an airborne concentration of lead of 30 micrograms per cubic meter of air (µg/m³) calculated as an eight hour time-weighted average (TWA).


C. Competent Person: One who is capable of identifying existing and predictable lead hazards in the surroundings or working conditions and who has authorization to take prompt corrective measures to eliminate them.
D. Containment System: An enclosure built around lead paint removal areas designed to contain lead paints debris and prevent emissions to the environment.

E. Emission: A release of material to the air, water or ground.


G. Hazardous Waste (lead paint debris): Waste that is classified as hazardous due to its concentrations of regulated hazardous substances. Paint debris is classified as hazardous waste if, after testing by Toxicity Characteristic Leaching Procedure (TCLP), the leachate contains any of the 8 metals or other substances in concentrations at or above limits established in 40 CFR 261.

H. HEPA: a high efficiency particulate filter (HEPA) that is 99.97% efficient against particles of 0.3 microns in size or larger.

I. Lead Containing Dust and Debris: Dust and debris generated during the project which contains lead in any amount, including but not limited to pulverized paint, spent abrasive, filters (wet or dry), and containment materials upon which lead is still present.


L. PEL: Permissible Exposure Limit. An employee exposure, without regard to the use of respirators, to an airborne concentration of lead of 50 ug/m3 over an 8 hour TWA.


N. Regulated Area: Area established by the Contractor to demarcate the zone(s) wherein airborne concentrations of lead exceed, or can be expected to exceed, the Action level.

O. SSPC: Steel Structures Painting Council. An independent, non-profit organization of engineers, technical specialists, and Contractors whose goal is research and development of new coatings and methods for removal, application and disposal of existing coatings on industrial structures.

P. Tarpaulins: Flexible fabric, vinyl, plastic or canvas cover sheets, impenetrable to dust, wind and water, used to enclose the cable and/or scaffold support system comprising the containment enclosure.
Q. TCLP: Toxicity Characteristic Leaching Procedure. Laboratory tests conducted on wastes that determine the amount of hazardous materials that leach out into a test solution. The test is intended to simulate the properties of water as it leaches out into a test solution. The test is intended to simulate the properties of water as it leaches through a solid waste landfill. TCLP testing is defined in 40 CFR 261, Appendix II.

R. TSP: Total Suspended Particulate.

S. TWA: Total Weight Average

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

3.1 CONTRACTORS REQUIREMENTS

Worker Protection Required While Establishing the 8-hour TWA.

A. Prior to and at the completion of lead abatement activities, the contractor must make available, to the PHA, medical surveillance consisting of worker blood lead levels.

B. Each employer who has a workplace or operation covered by this standard shall initially determine if any employee may be exposed to lead at or above the action level. Employee exposure is that exposure which would occur if the employee were not using a respirator.

Until the contractor performs an employee exposure assessment and documents that the employee performing any related tasks is not exposed above the anticipated exposure levels (see Table 1), the employer shall treat the employee as if the employee were exposed above the anticipated exposure levels. In other words, until an employee exposure assessment notes otherwise, a "worst-case" exposure assessment is assumed and the proper PPE is required.

Historical data may be acceptable in place of air monitoring for the employee exposure assessment. Where the employer has previously monitored for lead exposures, and the data were obtained within the past 12 months during work operations conducted under workplace conditions closely resembling the processes, type of material, control methods, work practices, and environmental conditions used and prevailing in the employer's current operations, the employer may rely on such earlier monitoring results to satisfy the requirements of 29 CFR 1926.62. However, this information must be reviewed and evaluated by the Environmental Affairs department on a case-by-case basis prior to field activities.
### TABLE 1

Anticipated Air-Borne Lead Levels by Activity

<table>
<thead>
<tr>
<th>Anticipated Lead Levels</th>
<th>Activity</th>
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<tr>
<td>500 ug/m³</td>
<td>Manual demolition of structures containing lead-based coatings or paint, manual scraping, manual sanding, heat gun applications, power tool cleaning with dust collection systems, and spray painting with lead paint.</td>
</tr>
<tr>
<td>2,500 ug/m³</td>
<td>Using lead-containing mortar, lead burning, or conducting the following activities where lead-based coatings or paints are present. Rivet busting, power tool cleaning without dust collection systems, cleanup activities where dry expendable abrasives are used, and abrasive blasting enclosure movement and removal.</td>
</tr>
<tr>
<td>&gt;2,500 ug/m³</td>
<td>Activities involving lead-based coatings or paint structures disturbed by abrasive blasting, rivet busting, welding, cutting, and torch burning.</td>
</tr>
</tbody>
</table>

C. Workers performing the following activities (or equivalent) shall be protected to the anticipated lead air-borne exposure levels (respiratory protection, etc.) dictated by the OSHA lead standard (CFR 1926.62). (Refer to Table 1.) Until an exposure assessment is completed.

D. The exposure assessment shall be conducted according to OSHA and shall include personnel and area monitoring. The contractor shall not be released from the worst case scenario until the analytical data is received and reviewed by the Chief Construction Manager.

E. All air samples shall be collected, by a qualified industrial hygienist, and analyzed according to NIOSH method 7082, or equivalent. All samples shall be analyzed by laboratories accredited by the American Industrial Hygiene Association (AIHA).
F. The PPE and regulations concerning the corresponding 8-hour TWAs are as follows:

**TABLE 2**

Air-Borne Lead Exposure and Protection Requirements

<table>
<thead>
<tr>
<th>8-Hour Lead TWA Requirement</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;30 ug/m³</td>
<td>• Initial Employee Exposure Assessment</td>
</tr>
<tr>
<td></td>
<td>• Hand-washing Facilities</td>
</tr>
<tr>
<td></td>
<td>• Housekeeping (HEPA Vacuums and Wetting Agents)</td>
</tr>
<tr>
<td></td>
<td>• Medical Removal Protection</td>
</tr>
<tr>
<td>30 ug/m³ to PEL 50 ug/m³</td>
<td>• Initial Employee Exposure Assessment</td>
</tr>
<tr>
<td></td>
<td>• Hand-washing Facilities</td>
</tr>
<tr>
<td></td>
<td>• Periodic Exposure Monitoring</td>
</tr>
<tr>
<td></td>
<td>• Biologic Monitoring and Recordkeeping</td>
</tr>
<tr>
<td></td>
<td>• Annual Employee Training</td>
</tr>
<tr>
<td></td>
<td>• Housekeeping (HEPA Vacuums and Wetting Agents)</td>
</tr>
<tr>
<td></td>
<td>• Medical Examinations and Recordkeeping</td>
</tr>
<tr>
<td></td>
<td>• Medical Removal Protection</td>
</tr>
<tr>
<td>&gt;PEL 50 ug/m³</td>
<td>• Initial Employee Exposure Assessment</td>
</tr>
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<td>• Hand-washing Facilities</td>
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<td>• Periodic Exposure Monitoring</td>
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<td>• Biologic Monitoring and Recordkeeping</td>
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<tr>
<td></td>
<td>• Annual Employee Training</td>
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<td></td>
<td>• Housekeeping (HEPA Vacuums and Wetting Agents)</td>
</tr>
<tr>
<td></td>
<td>• Appropriate Respiratory Protection (refer to 29 CFR 1926.62 to determine appropriate protection)</td>
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<tr>
<td></td>
<td>• Warning Signs</td>
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<tr>
<td></td>
<td>• Protective Clothing</td>
</tr>
<tr>
<td></td>
<td>• Change Areas</td>
</tr>
<tr>
<td></td>
<td>• Decontamination Facilities Including Showers</td>
</tr>
<tr>
<td></td>
<td>• Separate Eating Areas</td>
</tr>
<tr>
<td></td>
<td>• Medical Examinations and Recordkeeping</td>
</tr>
<tr>
<td></td>
<td>• Medical Removal Protection</td>
</tr>
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</table>

### 3.2 ENGINEERING AND WORK PRACTICE CONTROLS

A. Engineering Controls:

Engineering controls, such as ventilation, and good work practices are the preferred methods of minimizing exposures to airborne lead at the worksite. The engineering control methods that can be used to reduce or eliminate lead exposures can be grouped into three main categories: (1) substitution; (2) isolation; and (3) ventilation. Engineering controls are the first line of defense in protecting workers from hazardous exposures.
1. Substitution:

   a. Substitution includes using a material that is less hazardous than lead, changing from one type of process equipment to another, or even, in some cases, changing the process itself to reduce the potential exposure to lead. In other words, material, equipment, or an entire process can be substituted to provide effective control of a lead hazard. However, in choosing alternative methods, a hazard evaluation should be conducted to identify inherent hazards of the method and equipment.

   b. Examples of substitution include:

      • **Use of a less hazardous material**: applying a nonlead paint rather than a coating that contains lead.

      • **Change in process equipment**: using less dusty methods such as vacuum blast cleaning, wet abrasive blast cleaning, shrouded power tool cleaning, or chemical stripping to substitute for open abrasive blast cleaning to reduce exposure to respirable airborne particulates containing lead.

      • **Change in process**: performing demolition work using mobile hydraulic shears instead of a cutting torch to reduce exposure to lead fumes generated by heating lead compounds.

   c. Any material that is being considered as a substitute for a lead-based paint should be evaluated to ensure that it does not contain equally or more toxic components (e.g., cadmium or chromates). Because substitute materials can also be hazardous, employers must obtain a Material Safety Data Sheet (MSDS) before a material is used in the workplace. If the MSDS identifies the material as hazardous, as defined by OSHA's hazard communication standard (29 CFR 1926.59), an MSDS must be maintained at the job site and proper protective measures must be implemented prior to usage of the material.

   d. **Isolation** is a method of limiting lead exposure to those employees who are working directly with it. A method which isolates lead contamination and thus protects both nonessential workers, bystanders, and the environment is to erect a sealed containment structure around open abrasive blasting operations. However, this method may substantially increase the lead exposures of the workers doing the blasting inside the structure. The containment structure must therefore be provided with negative-pressure exhaust ventilation to reduce workers’ exposure to lead, improve visibility, and reduce emissions from the enclosure.
ii. **Ventilation**, either local or dilution (general), is probably the most important engineering control available to the safety and health professional to maintain airborne concentrations of lead at acceptable levels. Local exhaust ventilation, which includes both portable ventilation systems and shrouded tools supplied with ventilation, is generally the preferred method. If a local exhaust system is properly designed, it will capture and control lead particles at or near the source of generation and transport these particles to a collection system before they can be dispersed into the work environment.

iii. **Dilution Ventilation**, on the other hand, allows lead particles generated by work activities to spread throughout the work area and then dilutes the concentration of particles by circulating large quantities of air into and out from the work area. For work operations where the sources of lead dust generation are numerous and widely distributed (e.g., open abrasive blasting conducted in containment structures), dilution ventilation may be the best control.

iv. Examples of ventilation controls include the following:

- Power tools that are equipped with dust collection shrouds or other attachments for dust removal and are exhausted through a HEPA vacuum system.
- Vacuum blast nozzles (vacuum blasting is a variation on open abrasive blasting). In this type of blasting, the blast nozzle has local containment (a shroud) at its end, and containment is usually accomplished through brush-lined attachments at the outer periphery and a vacuum inlet between the blast nozzle and the outer brushes. Containment structures that are provided with negative-pressure dilution ventilation systems to reduce airborne lead concentrations within the enclosure, increase visibility, and control emissions of particulate matter to the environment.

B. **Work Practice Controls:**

Work practices involve the way a task is performed. OSHA has found that appropriate work practices can be a vital aid in lowering worker exposures to hazardous substances and in achieving compliance with the PEL. Some fundamental and easily implemented work practices are: (1) good housekeeping, (2) use of appropriate personal hygiene practices, (3) periodic inspection and maintenance of process and control equipment, (4) use of proper procedures to perform a task, (5) provision of supervision to ensure that the proper procedures are followed, and (6) use of administrative controls.

1. **Housekeeping:**

   a. A rigorous housekeeping program is necessary in many jobs to keep airborne lead levels at or below permissible exposure limits. Good housekeeping involves a regular schedule of housekeeping activities to remove accumulations of lead dust and lead-containing debris. The schedule should be adapted to exposure conditions at a particular worksite.
b. All workplace surfaces must be maintained as free as practicable of accumulations of lead dust. Lead dust on overhead ledges, equipment, floors, and other surfaces must be removed to prevent traffic, vibration, or random air currents from re-entraining the lead-laden dust and making it airborne again. Regularly scheduled cleanups are important because they minimize the re-entrainment of lead dust into the air, which otherwise serves as an additional source of exposure that engineering controls are generally not designed to control.

c. Vacuuming is considered the most reliable method of cleaning dusty surfaces, but any effective method that minimizes the likelihood of re-entrainment may be used (for example, a wet floor scrubber). When vacuuming equipment is used, the vacuums must be equipped with high-efficiency particulate air (HEPA) filters. Blowing with compressed air is generally prohibited as a cleaning method, unless the compressed air is used in conjunction with a ventilation system that is designed to capture the airborne dust created by the compressed air (e.g. dust "blowdown" inside a negative-pressure containment structure). In addition, all persons doing the cleanup should be provided with suitable respiratory protection and personal protective clothing to prevent contact with lead.

d. Where feasible, lead-containing debris and contaminated items accumulated for disposal should be wet-misted before handling. Such materials must be collected and put into sealed impermeable bags or other closed impermeable containers. Bags and containers must be labeled to indicate that they contain lead-containing waste.

i. **Personal Hygiene Practices**: Personal hygiene is also an important element in any program to protect workers from exposure to lead dust. When employee exposure is above the PEL, the lead standard requires the employer to provide, and ensure that workers use, adequate shower facilities (where feasible), hand-washing facilities, clean change areas, and separate non-contaminated eating areas. Employees must also wash their hands and faces prior to eating, drinking, using tobacco products, or applying cosmetics, and they must not eat, drink, use tobacco products, or apply cosmetics in any work area where the PEL is exceeded. In addition, employees must not enter lunchroom facilities or eating areas while wearing protective work clothing or equipment unless surface lead dust has first been removed from the clothing or equipment by vacuuming or another cleaning method that limits dispersion of lead dust.

ii. Workers who do not shower and change into clean clothing before leaving the worksite may contaminate their homes and vehicles with lead dust. Other members of the household may then be exposed to harmful amounts of lead. A recent NIOSH publication (NIOSH 1992) points out the dangers of "take-home" lead contamination. For the same reason, vehicles driven to the worksite should be parked where they will not be contaminated with lead.
iii. The personal hygiene measures described above will reduce worker exposure to lead and decrease the likelihood of lead absorption caused by ingestion or inhalation of lead particles. In addition, these measures will minimize employee exposure to lead after the work shift ends, significantly reduce the movement of lead from the worksite, and provide added protection to employees and their families.

2. Change Areas:
   a. When employee airborne exposures to lead are above the PEL, the employer must provide employees with a clean change area that is equipped with storage facilities for street clothes and a separate area with facilities for the removal and storage of lead-contaminated protective work clothing and equipment. Separate clean and dirty change areas are essential in preventing cross-contamination of the employees' street and work clothing.
   b. Clean change areas are used to remove street clothes, to suit up in clean work clothes (protective clothing), and to don respirators prior to beginning work, and to dress in street clothes after work. No lead-contaminated items are permitted to enter the clean change area. Work clothing should be worn only on the job site. Under no circumstances should lead-contaminated work clothes be laundered at home or taken from the worksite, except to be laundered professionally or properly disposed of following applicable Federal, State, and local regulations.

3. Showers:
   When employee exposures exceed the PEL, the employer must provide employees with suitable shower facilities, where feasible, so that exposed employees can remove accumulated lead dust from their skin and hair prior to leaving the worksite. Where shower facilities are available, employees must shower at the end of the work shift before changing into their street clothes and leaving the worksite. Showers must be equipped with hot and cold water, in accordance with 29 CFR 1926.51(f)(4)(iv).

4. Washing Facilities:
   Washing facilities must be provided to employees in accordance with the requirements of 29 CFR 1926.51(f). Water, soap, and clean towels are to be provided for this purpose. Where showers are not provided, the employer must ensure that employees wash their hands and faces at the end of the work shift.

5. Eating Facilities:
   The employer must provide employees who are exposed to lead at levels exceeding the PEL with eating facilities or designated areas that are readily accessible to employees and must ensure that the eating area is free from lead contamination. To further minimize the possibility of food contamination and reduce the likelihood of additional lead absorption from contaminated food, beverages, tobacco, and cosmetic products, the employer must prohibit the storage, use, or consumption of these products in any area where lead dust or fumes may be present.
6. Periodic Inspection and Maintenance:

Periodic inspection and maintenance of process equipment and control equipment such as ventilation systems are another important work practice control. At worksites where full containment is used as an environmental control, the failure of the ventilation system for the containment area can result in hazardous exposures to workers within the enclosure. Equipment that is near failure or in disrepair will not perform as intended. Regular inspections can detect abnormal conditions so that timely maintenance can be performed. If process and control equipment is routinely inspected, maintained, and repaired, or is replaced before failure occurs, there is less chance that hazardous employee exposures will occur.

7. Performance of Task:

a. In addition to the work practice controls previously described in Section B, the employer must provide training and information to employees as required by OSHA's lead in construction (29 CFR 1926.62), hazard communication (29 CFR 1926.59), and safety training and education (29 CFR 1926.21) standards. One important element of this program is training workers to follow the proper work practices and procedures for their jobs. Workers must know the proper way to perform job tasks to minimize their exposure to lead and to maximize the effectiveness of engineering controls. For example, if a worker performs a task away from (rather than close to) an exhaust hood, the control measure will be unable to capture the particulates generated by the task and will thus be ineffective.

b. In certain applications such as abatement in buildings, wet methods can significantly reduce the generation of lead-containing dust in the work area. Wetting of surfaces with water mist prior to sanding, scraping, or sawing, and wetting lead-containing building components prior to removal will minimize airborne dust generation during these activities. Failure to operate engineering controls properly may also contaminate the work area. Workers can be informed of safe operating procedures through fact sheets, discussions at safety meetings, and other educational means.

8. Supervision:

a. Good supervision is another important work practice. It provides needed support for ensuring that proper work practices are followed by workers. By directing a worker to position the exhaust hood properly or to improve work practice, such as standing to the side or upwind of the cutting torch to avoid the smoke plume, a supervisor can do much to minimize unnecessary employee exposure to airborne contaminants.
b. The OSHA construction standard for lead also requires that a competent person perform frequent and regular inspections of job sites, materials, and equipment. A competent person is defined by the standard as one who is capable of identifying existing and predictable lead hazards and who has authorization to take prompt corrective measures to eliminate them.

9. Administrative Controls:

a. Administrative controls are another form of work practice controls that can be used to influence the way a task is performed. Controls of this type generally involve scheduling of the work or the worker. For example, employee exposure can be controlled by scheduling construction activities or workers' tasks in ways that minimize employee exposure levels. One method the employer can use is to schedule the most dust- or fume-producing operations for a time when the fewest number of employees will be present.

b. Another method is worker rotation, which involves rotating employees into and out of contaminated areas in the course of a shift, thereby reducing the full-shift exposure of any given employee. When a worker is rotated out of the job that involves lead exposure, he or she is assigned to an area of the worksite that does not involve lead exposure. If this method is used to control worker exposure to lead, the lead standard requires that the employer implement a job rotation schedule that (1) identifies each affected worker, (2) lists the duration and exposure levels at each job or work station where each affected employee is located, and (3) lists any other information that may be useful in assessing the reliability of administrative controls to reduce exposure to lead.

3.3 ENVIRONMENTAL PROTECTION PROGRAMS – AIR, WATER AND GROUND

A. Air Quality:

1. The Contractor shall control emissions of particulate matter from the project site to comply with federal, state and local regulations.

2. The Contractor shall make provisions to contain any and all nuisance dust arising from construction activities. This includes halting the work and making corrections in the event unacceptable emissions are observed. Nuisance dust is any amount of dust that creates a disturbance or interferes with the activities of another party. In other words, if another party, the Port Authority, or a tenant of the Port Authority, complains about the dust arising from a particular activity that is considered Nuisance Dust.

3. Unless otherwise directed by the Port Authority, the Contractor shall verbally provide the results of any and all monitoring to the Environmental Affairs Department within 72 hours after the monitoring was performed. Verbal notification within 24 hours is preferred. Written results should be provided within one week.
4. It should be noted that sandblasting operations regarding lead-based paint are not recommended. However, if sandblasting cannot be avoided, then the following guidelines apply. In addition to employee exposure monitoring, Total Suspended Particulate (TSP) monitoring shall be conducted throughout the first week of removal operations. If the results of this monitoring do not exceed 200 ug/m³ TSP, averaged over a three-consecutive-hour-period, or 400 ug/m³ TSP averaged over one hour, monitoring may be suspended. Monitoring shall be resumed, at Contractor’s expense, as a result of a nuisance report from adjacent work areas or properties, or if fugitive emissions exceed the regulatory limits.

B. Protection of Water Quality:

The Contractor shall insure that no releases of lead are permitted into bodies of water or storm sewers. The Contractor shall notify the Port Authority immediately regarding any actual or potential release that may affect water quality.

C. Ground Quality:

1. The Contractor shall not allow contamination of the ground on or around the project site to occur from the removal of water tanks, paint removal work, debris handling, or other project-related activities.

2. The Contractor shall develop a written program to establish and implement practices and procedures for preventing contamination of the ground from the lead removal operation and other project-related activities. The program shall effectively and clearly communicate the methods for halting the work should ground contamination occur, correcting the deficiencies which caused the contamination, and provide procedures for removing and replacing contaminated ground.

3. Materials spilled onto soil shall be cleaned up immediately and steps taken to avoid reoccurrence. The Contractor shall immediately notify the Port Authority when any spills or releases occur.

3.4 WASTE CLASSIFICATION, HANDLING AND DISPOSAL

A. Materials containing lead-based paint are characterized for waste disposal by the ability of the lead to “leach” from the debris. A Toxicity Characteristic Leaching Procedure (TCLP) is the analysis required for determining waste characterization and disposal. If the TCLP for lead exceeds 5.0 mg/L the waste must be disposed of as a hazardous waste. (See recycling information noted below.) If the lead TCLP results are less than 5.0 mg/L the waste can be disposed as a One-Time Shipment Unlisted Special Waste. In addition, if chemical stripping agents are used in the abatement of lead-based paint additional testing may be required. The disposal facility will determine which tests need to be performed. The Environmental Affairs Department will assist with proper waste classification.
B. The Contractor is responsible for assuring that all sampling, handling, storage transportation, and disposal requirements are properly implemented, including satisfactory training of job site personnel and the cleaning of all reusable items and equipment prior to removal from the site.

C. The Contractor will become the generator for all waste generated from Contractor-supplied materials, and is responsible for obtaining their own TNRCC waste codes and EPA identification number for such waste. The PHA will be the generator for the actual lead-based paint debris. If the wastes are mixed, the PHA will become the generator.

D. All attempts shall be made to recycle all waste material. The dismantled steel structure shall be transported to an approved disposal or recycling location.

3.5 SPECIAL CONSIDERATION

In addition to the project requirements found in this specification, the Contractor shall pay specific attention to the following:

A. Surfaces not to be prepared or painted shall be protected from damage, contamination with abrasive and debris, and overspray from coating application.

B. The Port Authority will provide designated areas for conducting work. All materials, equipment and supplies shall be restricted to designated areas. Release of airborne emissions including dust, debris and overspray is not permitted.

C. The lead abatement will not be considered acceptable until the surface coating is detected below a project specific concentration. The project specific lead concentration will be determined by Port Authority Environmental Affairs Department prior to field activities.

END OF SECTION
# Harris County Road and Bridge Construction
## Prevailing Wage Rates
### Quarter 4 of 2019

<table>
<thead>
<tr>
<th>Worker Classifications</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asphalt Distributor Operator</td>
<td>$14.06</td>
</tr>
<tr>
<td>Asphalt Paving Machine Operator</td>
<td>$14.32</td>
</tr>
<tr>
<td>Asphalt Raker</td>
<td>$12.36</td>
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<td>Asphalt Shoveler</td>
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<td>Broom or Sweeper Operator</td>
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<td>Bulldozer Operator</td>
<td>$11.81</td>
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<tr>
<td>Carpenter (Rough)</td>
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<td>Concrete Finisher (Paving)</td>
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<td>Concrete Finisher (Structures)</td>
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<td>Work Zone Barricade Servicer</td>
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</tbody>
</table>

Welders - Receive rate prescribed for craft performing operation to which welding is incidental.

DOL Ref #TX20030048
State: Texas
Construction Type: Highway
Counties: Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange and Waller Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects, and railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; other major bridges).

Asphalt Distributor Operator
Drives distributor truck, sets spray bars and operates valves and levers to control distribution of bituminous material for highway surfacing. May oil, grease or otherwise service and make adjustments to equipment as needed. Performs other related duties.

Asphalt Paving Machine Operator
Operates paving machine that spreads and levels asphaltic concrete on highway subgrade. Controls movement of machine, raises and lowers screed, regulates width of screed. May, oil, grease, service and make adjustments to equipment as needed. Performs other related duties.

Asphalt Raker
Distributes asphaltic materials evenly over road surface by raking and brushing material to correct thickness; directs Laborers when to add or take away material to fill low spots or to reduce high spots. Performs other related duties.

Asphalt Shoveler
A general term used on construction work covering many unskilled classifications requiring work of a physical nature. A laborer works with all crews doing everything from pick and shovel work to cleaning up lumber with hammer, shoveling and placing concrete, uses air tools, cleans concrete joints and fills joints with sealing compound from bucket or with hose and nozzle from a central source, applies coating of oil to inside face of forms, may help set and strip forms, unloads and transports reinforcing steel, cures newly poured concrete, helps lower pipe into ditch for pipelayers, builds fences, works with dirt crew keeping construction layout stakes out of the way of dirt moving equipment.

Broom or Sweeper Operator
Operates a self-propelled machine to sweep and clean roadway surfaces. May oil grease, service and make adjustments to equipment as needed. Performs other related duties.

Bulldozer Operator
Operates a crawler tractor with a bulldozer mounted in front of chassis to level, distribute and push earth or other material. May operate a ripper attachment to break up rock or other hard material. May use a push block on front of tractor to push load scrapers. May oil grease, or otherwise service and make minor repairs to equipment as needed. Performs other related duties.

Carpenter (Rough)
Works from plans to build, assemble, fit together, align, plum, and set in place forms for molding concrete structures. Forms may be wood, steel, aluminum, fiberglass or any other type of material. Checks form while concrete is placed. May install miscellaneous materials integral to concrete structures. May set precut concrete elements. Prepares for slipforming traffic rail and median barrier. May install permanent metal deck forms. May work with power tools Performs other related duties.

Concrete Finisher (Paving)

Finishes the exposed surfaces of fresh concrete paving, median barrier and every element of concrete structures to the final grade and contour structures to the final grade and contour with the use of straight edges and steel trowels. Operates bridge deck finishing machine. Finishes concrete curbs and gutters. Finishes exposed surface of concrete after forms have been removed by patching imperfections with fresh concrete, rubbing surface with abrasive stone, and directing others in removing excess or defective concrete with power tools. Performs other related duties.

Concrete Finisher (Structures)

A worker semi-skilled in concrete finishing who assists Concrete finisher by performing specific or general duties of lesser skill and keeping Concrete Finisher supplied with materials, tools, and supplies; cleaning working area an equipment; and holding materials and tools. Performs other related duties.

Concrete Paving Curbing, Machine Operator

Operates self-propelled machine(s) which may or may not travel on concrete paving forms, spreading and leveling fresh concrete to grade by use of augers and screeds. May oil, grease or otherwise service and make adjustments to equipment as necessary. Performs other related duties.

Concrete Paving Finishing, Machine Operator

Operates self-propelled machine(s) which may or may not travel on concrete paving forms, spreading and leveling fresh concrete to grade by use of augers and screeds. May oil, grease or otherwise service and make adjustments to equipment as necessary. Performs other related duties.

Concrete Paving Joint Sealer, Operator

Cleans and seals joints requiring a hot or cold sealing compound in concrete paving, sidewalks, driveway and approach slabs. May oil, grease or make necessary repairs adjustments to equipment as needed. Performs other related duties.

Concrete Paving Saw Operator

Operates a water-cooled power saw with either or an abrasive blade to saw expansion and contraction joints in concrete paving. May also be used to saw asphaltic pavements. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Concrete Paving Spreader, Operator

Operates self-propelled machine(s) which may or may not travel on concrete paving forms, spreading and leveling fresh concrete to grade by use of augers and screeds. May oil, grease or otherwise service and make adjustments to equipment as necessary. Performs other related duties.

Concrete Rubber
Finishes the exposed surface of concrete masonry after the forms have been removed by patching holes and broken corners with fresh concrete, rubbing surface with abrasive stone to remove rough spots, and removing high spots and defective concrete with hand chisel and hammer or pneumatic chisel and powered abrasive stone. Performs other related duties.

Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator

A worker who operates a lattice boom type crane can hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber tired. May include placement of rock riprap, clamshell, dragline, pipe and pile driving operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Crusher and Screed Plant Operator

Operates a crusher or screening plant through which rock is run to break it into crushed stone for construction or to control flow of materials not needed. May include minor repairs and may service and make necessary adjustments to equipment as needed. Performs other related duties.

Electrician

Plans and directs the layout of metal electrical conduit, installs wiring systems, switch-panels, buss bars, works on overhead distribution systems and underground distribution systems. Performs other related duties.

Flagger

A worker who directs traffic in or around a construction site. May use signs or devices to direct traffic. May help assemble, position and clean devices or equipment used to direct traffic. Must be able to effectively communicate with the public. May require certain level of training by TXDOT specifications. Performs other related duties.

Form Builder/Setter (Structures)

Works from plans to build, assemble, fit together, align, plum, and set in place forms for molding concrete structures. Forms may be wood, steel, aluminum, fiberglass or any other type of material. Checks forms while concrete is placed. May install miscellaneous materials integral to concrete structures. May set precast concrete elements. Prepares for slipforming traffic rail and median barrier. May install permanent metal deck forms. May work with power tools. Performs other related duties.

Form Liner (Paving & Curb)

Fits together, aligns and sets to grade metal and wooden forms for placement of concrete paving and curbs. Works with survey crew to set stringline for paving, curb, and gutter curb. Performs other related duties.

Form Setter (Paving & Curb)

Fits together, aligns and sets to grade metal and wooden forms for placement of concrete paving and curbs. Works with survey crew to set stringline for paving, curb, and gutter curb. Performs other related duties.

Foundation Drill Operator, (Crawler Mounted)

Operates a hole-drilling machine that is crawler mounted. May include geotechnical operations such as soils nails, rock nails, tiebacks, anchors and jet grouting. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Foundation Drill Operator, (Truck Mounted)
Operates a hole drilling machine that is mounted on the rear of a rubber tired vehicle or truck. May include soils nails, rock nails, tiebacks, anchors and jet grouting. Drive truck from location to location or may have laborer who drives truck. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Front End Loader Operator**

Operates a rubber tired, skid steer or crawler type tractor with an attached scoop type bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading and unloading trucks. May be used with attachments in lieu of the bucket. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Laborer, Common**

A general term used on construction work covering many unskilled classifications requiring work of a physical nature. A laborer works with all crews doing everything from pick and shovel work to cleaning up lumber with hammer, shoveling and placing concrete, uses air tools, cleans concrete joints and fills joints with sealing compound from bucket or with hose and nozzle from a central source, applies coating of oil to inside face of forms, may help set and strip forms, unloads and transports reinforcing steel, cures newly poured concrete, helps lower pipe into ditch for pipelayers, builds fences, works with dirt crew keeping construction layout stakes out of the way of dirt moving equipment.

**Laborer, Utility**

Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects and tasks where demands require workmen with varied experience and ability to work without close direction. Unloads and transports reinforcing steel. May occasionally place and tie reinforcing steel. Directs common laborers in pouring concrete. Erects shoring and bracing. Assists in installation of pipe. Installs, operate and maintains dewatering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators. Directs truck drivers and scraper operators to dumping positions to maintain grades as directed. Uses power tools and air tools. May work as lead man in a labor crew. His performance of a wide variety of construction jobs distinguishes him from a helper assigned to a specific craft. Installs and maintains erosion control. Is more or less a general utility construction worker. May be second step in learning a skill, and may later become a helper in a specific classification. Performs other related duties.

**Manhole Builder**

Constructs a means of permanent access to water and sewer lines for maintenance purposes. This work consists of laying brick or concrete slab at bottom of ditch up to an approximate grade line near the surface of the ground. Brick or block is normally laid to form a nearly circular manhole. Brick or block is laid in by eyesight and is normally to a plumb line. Chipped or culled brick can be used quite often is. No effort may be made to keep mortar off the face of the brick and joints are not pointed. May apply coating of concrete to interior and exterior surface. Performs other related duties.

**Mechanic**

Assembles, set up, adjusts and maintains and repairs all types of construction equipment and trucks. He may perform the duties of a welder in repair of equipment. Performs other related duties.

**Milling Machine Operator, (Fine Grade)**

Operates a power-driven milling machine that planes material of the to roadbed and discharges the material into a hauling unit or a windrow. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Mixer Operator**
Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects and tasks where demands require workmen with varied experience and ability to work without close direction. Unloads and transports reinforcing steel. May occasionally place and tie reinforcing steel. Directs common laborers in pouring concrete. Erects shoring and bracing. Assists in installation of pipe. Installs, operates and maintains dewatering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators. Directs truck drivers and scraper operators to dumping positions to maintain grades as directed. Uses power tools and air tools. May work as lead man in a labor crew. His performance of a wide variety of construction jobs distinguishes him from a helper assigned to a specific craft. Installs and maintains erosion control. Is more or less a general utility construction worker. May be second step in learning a skill, and may later become a helper in a specific classification. Performs other related duties.

**Motor Grader Operator (Rough)**

Operates a motor grader. Equipment is used to grade excavation and embankment and to lay asphalt, base and other materials. May blade haul roads and do other general motor grader work, but does not perform finish grade work to close specification tolerances. This operator may be a learner in the first phase of learning the skills of motor grader work. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Motor Grader Operator**

Operates a motor grader. Equipment is used to grade excavation and embankment and to lay asphalt, base and other materials. May blade haul roads and do other general motor grader work, but does not perform finish grade work to close specification tolerances. This operator may be a learner in the first phase of learning the skills of motor grader work. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Oiler**

A learner or semi-skilled worker who under the direction of the watch engineer. May oil and grease or otherwise service all engines and necessary equipment as needed. He may clean and paint engine room as needed. Performs other related duties.

**Painter (Structures)**

Paints and stains structural steel and concrete surfaces of bridges, retaining walls, or other structures. Directs cleaning and abrasive blasting of surfaces prior to painting or staining. Performs other related duties.

**Pavement Marking Machine, Operator**

Operates machine used in laying paint stripes or markers on all types of paving. Loads machine with appropriate materials and may walk or ride on machine. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Piledriverman**

Sets in place, aligns, plumbs directs driving of timber, concrete, steel, pipe and any other type of piling. Sets, drives and pulls steel, concrete and other types of sheet piling. Rigs pile and leads and bracing. Signals operator. Splices piles before and after driving. Directs pile cutoff. May direct jetting or drilling equipment in connection with installing piles to grade. Performs other related duties.

**Pipelayer**

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Installs concrete, clay, steel, ductile iron, plastic, corrugated pipe and any other type of pipe for storm drainage, water lines, gas lines and sanitary sewer lines. Lays underground communication and electrical ducts. May install and set electrical ground boxes, hand holes, manholes, inlets and other structures. Caulks joints, make threaded and flanged connections. Installs valves and other accessories. Performs other related duties.

**Reinforcing Steel Setter, (Paving)**

Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. May direct unloading of material. Determines rigging required to complete work. Gives direction to reinforcing steel worker (helper) or common or utility laborers. May install miscellaneous materials integral to concrete structure or paving. May work with power tools. Performs other related duties.

**Reinforcing Steel Setter, (Structure)**

Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. May direct unloading of material. Determines rigging required to complete work. Gives direction to reinforcing steel worker (helper) or common or utility laborers. May install miscellaneous materials integral to concrete structure or paving. May work with power tools. Performs other related duties.

**Roller Operator, Pneumatic, (Self-Propelled)**

Operates a self-propelled machine with either steel wheels pneumatic tires, which is used to compact and smooth all bituminous materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Roller Operator, Steel Wheel, Flat Wheel/Tamping**

Operates a self-propelled machine with either steel wheels or pneumatic tires which is used to compact earth fills, subgrade, flexible base and all other types of materials except bituminous. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Roller Operator, Steel Wheel, Plant Mix Pavement**

Operates a self-propelled machine with either steel wheels pneumatic tires, which is used to compact and smooth all bituminous materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Scraper Operator**

Operates a self-contained wheeled tractor scraper both self loading or assisted by crawler tractors or other scrapers. Used to excavate and transport earth or other materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Servicer**

Drives a truck, which carries various fuels, oils, greases and filters. Must have knowledge of and is responsible for the correct oiling and greasing and changing of filters on equipment according to the manufacturers' specifications. Uses compressed air grease guns, wrenches and other tools. May make adjustments to clutches, brakes and other mechanical items. Keeps record of service preventive maintenance records. May have laborer assisting him. May require CDL if driving truck on public highways. Performs other related duties.

**Sign Installer (PGM)**
Sets forms, reinforcing steel, anchor bolts and pours concrete for Sign foundations. Fabricates and erects pipe and angle Frameworks by bolting, welding or other means prior to installation of signs that are normally prefabricated. Works from plans in location and drilling holes for proper location and alignment of signs. May direct hoisting of signs into place. Fastens signs to framework by bolting and other means. Locates and sets lighting brackets. May perform other work associated with signing projects. Supervises sign erector helper. Performs other related duties.

**Slip Form Machine Operator**

Cleans and seals joints requiring a hot or cold sealing compound in concrete paving, sidewalks, driveway and approach slabs. May oil, grease or make necessary repairs adjustments to equipment as needed. Performs other related duties.

**Spreader Box Operator**

Operates spreader box by adjusting hopper and strike off blade so that the gravel, stone or other material may be spread to a specific depth on road surface during seal coat and surface treatment operations. May oil, grease or other wise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Structural Steel Worker**

Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. May direct unloading of material. Determines rigging required to complete work. Gives direction to reinforcing steel worker (helper) or common or utility laborers. May install miscellaneous materials integral to concrete structure or paving. May work with power tools. Performs other related duties.

**Tractor operator (Crawler Type)**

Operates a crawler tractor with a bulldozer mounted in front of chassis to level, distribute and push earth or other material. May operate a ripper attachment to break up rock or other hard material. May use a push block on front of tractor to push load scrapers. May oil grease, or otherwise service and make minor repairs to equipment as needed. Performs other related duties.

**Tractor operator, Pneumatic**

Operates a gasoline or diesel powered agricultural tractor that tows compaction rollers, plow, disc. water tanks, scrapers and other similar operations. May use other miscellaneous attachments. May oil. Grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Traveling Mixer Operator**

Drives a gasoline or diesel truck upon which is mounted a concrete mixer. Operates concrete mixer and dumps concrete on the grade, into forms or into concrete pumps or buckets. Cleans mixer drum. May require CDL license for on highway use. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

**Truck driver, Lowboy-Float**

Drives a heavy-duty diesel powered truck to which is attached a trailer upon which heavy equipment is hauled. Driver is often required to operate heavy equipment to load or unload the lowboy. May require CDL license for on highway use. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

**Truck driver, Single Axle, (Heavy)**
Drive a light capacity truck for transporting loads of construction material. The truck is of single rear axle type, may have various kinds of beds attached, such as dump, flat bed, tank, etc. May require CDL license for driving on highway. May services and make necessary adjustments for proper operation equipment. Performs other related duties

**Truck driver, Single Axle, (Light)**

Drive a light capacity truck for transporting loads of construction material. The truck is of single rear axle type, may have various kinds of beds attached, such as dump, flat bed, tank, etc. May require CDL license for driving on highway. May services and make necessary adjustments for proper operation equipment. Performs other related duties

**Truck Driver (Tandem Axel Semi-Trailer)**

Drives a diesel-powered tractor pulling a semi trailer hauling materials. Hauls dirt, rock, aggregates or other material. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

**Work Zone Barricade Servicer**

Fabricates, erects and maintains temporary traffic control devices, including arrow boards, signs, barricades, channelizing devices, barrels and all message boards. May operates a truck during traffic control operations.

**Welders - Receive rate prescribed for craft performing operation to which welding is incidental.**