

## I. ADVERTISEMENT FOR BIDS

Sealed lump sum BIDS will be received by the Executive Director/CEO and/or the Operations Manager of the Sabine Neches Navigation District of Jefferson County, Texas at the Sabine Neches Navigation District Office, 8180 Anchor Drive, Port Arthur Texas 77642 until **2:00 p.m.** local time on **Friday, December 4th, 2020** for Placement Area 13 Levee Construction Project in Jefferson County, Texas, for the Sabine Neches Navigation District, at which time the BIDS will be opened publicly and read aloud. BIDS received after **2:00 p.m.** on **Friday, December 4th, 2020** will be returned unopened.

Each BID must be submitted in a sealed envelope, addressed to Mr. Randall Reese, Executive Director/CEO at Sabine Neches Navigation District. Each sealed envelope containing a BID must be plainly marked on the outside as BID for Placement Area 13 Levee Construction Project and the envelope should bear on the outside the name of the BIDDER, his address, and his license number (if applicable). If forwarded by overnight or express mail, the sealed envelope containing the BID must be enclosed in another envelope addressed to Mr. Reese, Sabine Neches Navigation District, 8180 Anchor Drive, Port Arthur, Texas 77642. Overnight or express mail must be received in the Sabine-Neches Navigation District's office no later than **2:00 p.m.** Local Time on **Friday, December 4th, 2020**. For purposes of express mail forms, the District's telephone number is (409) 729-4588.

A mandatory pre-bid meeting and site visit will be held at the Sabine Neches Navigation District Office, 8180 Anchor Drive, Port Arthur, Texas 77642 at 10:00 a.m. Local Time on **Friday, November 20th, 2020**. Attendance at the pre-bid meeting AND site visit is a prerequisite to a bidder being awarded the bid.

Bidders should contact Larry Fountain, Sabine-Neches Navigation District's Operations Manager, at (409) 729-4588 to arrange site visit to view proposed work, (other than the site visit on November 20<sup>th</sup>, 2020.)

Each BID must include a BID BOND equal to five percent (5%) of the amount of the BID. BID BONDS of unsuccessful BIDDERS will be returned.

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

- Mobilization and Demobilization
- Clearing and Stripping/Vegetation Removal
- Levee construction w/fabric installation

**The BID PACKAGE can be downloaded from our website, [www.navigationdistrict.org](http://www.navigationdistrict.org) as of Thursday, November 19th, 2020.**

SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

In accordance with Texas State law, including Local Government Code Chapter 176, each BIDDER MUST COMPLETE AND SUBMIT WITH THEIR BID A COPY OF THE VENDOR'S CONFLICT OF INTEREST QUESTIONNAIRE CONTAINED IN **EXHIBIT O**.

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

Equal Opportunity in Employment – All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap, or national origin. Bidders on this work will be required to comply with the President's Executive Order No. 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60.

SABINE NECHES NAVIGATION DISTRICT

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Randall Reese  
Executive Director/CEO

## II. INFORMATION FOR BIDDERS

BIDS will be received by Sabine Neches Navigation District (the "OWNER"), at 8180 Anchor Drive, Port Arthur, Texas 77642 until **2:00 p.m.** Local Time on **Friday, December 4th, 2020** and then at said office publicly opened and read aloud. Bidders should contact Larry Fountain, Sabine Neches Navigation District, at lfountain@navigationdistrict.org to arrange site visit to view proposed work.

Each BID must be submitted in a sealed envelope, addressed to Mr. Randall Reese, Executive Director/CEO. Each sealed envelope containing a BID must be plainly marked on the outside as BID for PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT and the envelope should bear on the outside the name of the BIDDER, his address, and his license number (if applicable). If forwarded by overnight or express mail, the sealed envelope containing the BID must be enclosed in another envelope addressed to Mr. Randall Reese, Sabine Neches Navigation District 8180 Anchor Drive, Port Arthur, Texas 77642. Overnight or express mail must be received in the Sabine Neches Navigation District's office no later than **2:00 p.m.** Local Time on **Friday, December 4th, 2020**. For purposes of express mail forms, the District's telephone number is (409) 729-4588.

A mandatory pre-bid meeting AND site visit will be held at the Sabine Neches Navigation District Office, 8180 Anchor Drive, Port Arthur, Texas 77642 at 10:00 a.m. Local Time on **Friday, November 20th, 2020**. Attendance at the pre-bid meeting is a prerequisite to a bidder being awarded the bid. BIDDERS must satisfy themselves of the extent of the WORK by examination of the site and a review of the drawings and specifications including ADDENDA (if applicable). BIDDERS should pay particular attention to the Scope of Work included herein as **Exhibit A**. After BIDS have been submitted, the BIDDER shall not assert that there was a misunderstanding concerning the quantities of WORK or of the nature of the WORK to be done.

**BIDDERS are advised to thoroughly familiarize themselves with Part IV, General Conditions, and Part V, Special Conditions, of this Contract, in particular with Part V, Paragraph 5, Construction Schedule, Paragraph 9, Liquidated Damages and Paragraph 16, Access to the Site.**

### **REQUIRED BID DOCUMENTS**

All BIDS must be made on the required BID Form (**Exhibit B**). All blank spaces for BID prices must be filled in, in ink or typewritten, and the BID Form must be fully completed and executed when submitted. A labor and equipment rental rate sheet, a project duration bar chart schedule, The Corporate Resolution (**Exhibit C**) if applicable, the Bid Bond (**Exhibit D**), an executed copy of the "Information Required of Bidders" (**Exhibit G**), and an executed copy of the "Vendor's Conflict of Interest Questionnaire" (**Exhibit O**) must also be fully completed and submitted with the BID Form. BIDDERS must also supply a detailed WORK PLAN for the PROJECT with the BID. Only one copy of the BID Form is required.

SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

The BIDS will be presumed to include all addenda that have been provided by the OWNER or ENGINEER to each prospective BIDDER. OWNER or ENGINEER will submit written addenda to the prospective BIDDERS by email. The bidder shall "Reply" to the Addendum email and the "Reply" email shall be evidence of the receipt of the addendum. If a BIDDER fails to include within his BID acknowledgement of receipt of addenda that have been properly submitted and received by a prospective BIDDER, then the OWNER may treat the addenda as though they had been received and treat the failure of the BIDDER to include the information concerning the addenda as an informality or minor defect.

**A CONDITIONAL OR QUALIFIED BID WILL NOT BE ACCEPTED.** Any BIDDER who BIDS terms, conditions or specifications not contained within the Contract Documents, including any addendum to the BID specifications, OR fails to submit ALL the Required Documents referenced above (and on the last page of the Bid Form), will be considered a conditional or qualified BID and will not be accepted.

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

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

Each BID must be accompanied by a BID BOND (**Exhibit D**) payable to the OWNER for five percent (5%) of the total amount of the BID. As soon as the BID prices have been compared, the OWNER will return the BONDS of all except the three lowest responsible BIDDERS. When the CONTRACT is executed, the bonds of the two remaining unsuccessful BIDDERS will be returned. The BID BOND of the successful BIDDER will be retained until the PAYMENT BOND (**Exhibit E**) and PERFORMANCE BOND (**Exhibit F**) have been executed and approved, after which it will be returned. A certified check or cashiers check, drawn on a bank that is a member of the Federal Reserve System, may be used in lieu of a BID BOND. Sureties companies executing BID, PERFORMANCE and PAYMENT BONDS required within the Contract Documents must appear on the Treasury Department's most current circular as a company holding a Certificate of Authority as acceptable sureties on federal bonds and as acceptable reinsurance companies (Department Circular 570, 2007 Revision or any subsequent or newer revision thereof in effect prior to the date of the submission of a BID hereunder). Such surety companies shall also be authorized to transact business in the State of Texas.

A PERFORMANCE BOND and PAYMENT BOND, each in the amount of one hundred percent

SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

(100%) of the total contract, with a corporate surety approved by the OWNER, will be required for the faithful performance of the contract.

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

The OWNER expects board approval to issue the INTENT TO AWARD at a scheduled board meeting after the date of public BID opening. NOTICE TO PROCEED will be issued only after the board has approved the CONTRACT award. Bids will be considered good for forty five (45) days from the date of public bid opening.

The party to whom the INTENT TO AWARD is issued will be required to return to OWNER the INSURANCE CERTIFICATE, PERFORMANCE BOND, and PAYMENT BOND within ten (10) calendar days from the date when INTENT TO AWARD is delivered to the BIDDER.

The OWNER, after receipt of acceptable INSURANCE CERTIFICATE, PERFORMANCE BOND, and PAYMENT BOND signed by the party to whom the INTENT TO AWARD was issued, and after board approval of CONTRACT ISSUANCE, shall meet and sign the CONTRACT and the owner will return to such party an executed duplicate of the CONTRACT. NOTICE TO PROCEED will be issued at CONTRACT signing. Should the OWNER not execute the CONTRACT within the forty five (45) day period, the BIDDER may by written notice, withdraw his BID. Such notice of withdrawal shall be effective upon receipt of the notice by the OWNER. In case of failure of the BIDDER to execute the CONTRACT, the OWNER may at his option consider the BIDDER in default; in which case the BID BOND accompanying the BID shall become the property of the OWNER.

Should there be reasons why the NOTICE TO PROCEED cannot be issued at CONTRACT signing, the time may be extended by mutual agreement between the OWNER and CONTRACTOR. If the NOTICE TO PROCEED has not been issued within the period mutually agreed upon, the CONTRACTOR may terminate the CONTRACT without further liability on the part of either party.

The BIDDER must agree to warranty all materials, equipment, and related items furnished and all work performed for a period of one year as further described in Paragraph 52, Contractors Warranty, of Part IV, General Conditions, of this Contract.

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

SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

The CONTRACT will be awarded by the Navigation District Board to the bid that it considers the lowest and best for the District. In selecting the lowest and best responsive, responsible BIDDER, consideration will be given not only to the financial standing, but also the general competency of the BIDDER for the performance of the work covered by the BID and to the ability of the BIDDER to meet the Project schedule. To this end, each BID shall be supported by the statement of the BIDDER'S experience as of recent date on the form entitled "INFORMATION REQUIRED OF BIDDERS" in **Exhibit G**, included within the BID documents. BIDDERS **must also supply a detailed WORK PLAN for the PROJECT with the BID.** Failure to submit ANY of the Required Bid Documents will result in the BID being considered non-responsive.

In accordance with Texas State law, including Local Government Code Chapter 176, each BIDDER MUST COMPLETE AND SUBMIT WITH THEIR BID A COPY OF THE VENDOR'S CONFLICT OF INTEREST QUESTIONNAIRE CONTAINED IN **EXHIBIT O**. (Failure to submit the completed VENDOR'S CONFLICT OF INTEREST QUESTIONNAIRE will result in the BID being considered non-responsive.)

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

THE OWNER IS EXEMPT FROM STATE SALES AND USE TAXES ON MATERIALS AND EQUIPMENT TO BE INCORPORATED IN THE PROJECT. THE CONTRACTOR IS THEREFORE REQUIRED TO BREAK HIS BID INTO MATERIAL AND LABOR PORTIONS AS SHOWN ON THE BID FORM. SAID TAXES SHALL NOT BE INCLUDED IN THE CONTRACT PRICE. CERTAIN CATEGORIES OF MATERIALS AND EQUIPMENT DO NOT QUALIFY FOR THE SALES TAX EXEMPTION AND INCLUDE MATERIALS, INCLUDING MOTOR FUEL WHICH ARE CONSUMED IN THE PERFORMANCE OF THE PROJECT, OWNED OR LEASED EQUIPMENT OF A CONTRACTOR WHICH IS USED IN THE PERFORMANCE OF THE PROJECT, AND MATERIALS WHICH ARE USED BY THE CONTRACTOR IN THE PERFORMANCE OF THE PROJECT AND SUBSEQUENTLY FURNISHED TO THE OWNER UNINSTALLED. A SEPARATION OF MATERIALS FORM IS INCLUDED AS **EXHIBIT N** AND SHALL BE REQUIRED OF THE SUCCESSFUL BIDDER.

SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

The OWNER requires that, at a minimum, the CONTRACTOR and his SUBCONTRACTORS pay their employees wages equal to those published by the Davis-Bacon Wage Rate. A copy of this survey is attached as **Exhibit H**. It is the CONTRACTOR'S responsibility to become familiar with and to comply with the laws of the State of Texas pertaining to minimum wage rates for public contracts. The CONTRACTOR will be responsible for ensuring that all SUBCONTRACTORS are aware of and comply with these laws. BIDDERS shall submit any questions or request for clarifications to these BID DOCUMENTS to the OWNER in writing/email. For technical information and all questions related to these BID documents contact Mr. Larry Fountain, Operations Manager for the Sabine Neches Navigation District at [lfountain@navigationdistrict.org](mailto:lfountain@navigationdistrict.org).

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

Payment shall be on a unit price basis in accordance with the values submitted on the bid form. CONTRACTOR will submit monthly invoices for progress payments. A ten-percent (10%) retainage will be held out on each billing until all work is completed in accordance with the CONTRACT. Submitted invoices shall bear resemblance and contain the information shown on the sample invoice form contained herein as **Exhibit M**. The OWNER, upon approval of monthly progress, will certify invoices within five (5) days for payment. OWNER will pay certified billing within thirty (30) days to the CONTRACTOR. Final payment will be made within thirty (30) days of approval of final billing. Acceptance of completion on this project is based solely on the CONTRACTOR achieving and maintaining the levee elevation denoted on the drawings.

A CONTRACTOR'S Affidavit and Waiver of Lien (**Exhibit I**) shall be provided to OWNER prior to final payment, stating that all bills of every kind incurred in the performance of the PROJECT have been paid in full, and to furnish the OWNER a release of all claims arising out of the work performed under the Contract.

### III. GENERAL CONTRACT

THIS CONTRACT between SABINE NECHES NAVIGATION DISTRICT of Jefferson County, Texas called "OWNER" and \_\_\_\_\_ whose address is \_\_\_\_\_ and telephone number is \_\_\_\_\_ called "CONTRACTOR", for the performance by the CONTRACTOR of the PROJECT on the terms and conditions as follows:

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



OWNER, whose representatives shall be entitled to make such inspections of the PROJECT and of CONTRACTOR'S records relating thereto as may be necessary to assure such results and compliance with the provisions hereof.

5. **INSURANCE AND BOND:** During the performance of the work hereunder, CONTRACTOR shall take out, carry and maintain, in insurance company or companies, and in policies of insurance acceptable to OWNER as specified in **Exhibit J** of these Bid Documents.
6. **RISK OF LOSS:** Until written acceptance of the PROJECT by OWNER all risk of loss, injury, or destruction by any cause other than acts or omissions of OWNER shall be borne by CONTRACTOR. Responsibility of CONTRACTOR shall extend to materials and equipment supplied by OWNER when delivered to CONTRACTOR.
7. **NON-ASSIGNABILITY:** This CONTRACT or any rights hereunder shall not be transferred, assigned or sublet without the advance written approval of OWNER. Subcontracting shall not relieve CONTRACTOR of primary responsibility.
8. **SUBCONTRACTORS:** CONTRACTOR may not subcontract out more than 15 percent (15%) of the contract amount without the prior written consent of OWNER. If any subcontractor shall be employed by the CONTRACTOR, prior written notice of the employment of the subcontractor and presentation of financial information as required by OWNER shall be presented prior to the subcontractor being allowed to enter in upon the property of OWNER to provide any work required under this CONTRACT. Any approved subcontractor shall give the indemnity and insurances required of the CONTRACTOR.
9. **OPERATIONS:** CONTRACTOR shall commence actual operations and execute them diligently, **WITHOUT DEMOBILIZING from the project once work has begun and without interruption**, to completion in a good and workmanlike manner within the period of time prescribed.
10. **DEFAULTS:** Time and quality of work shall be of the essence of this CONTRACT. If CONTRACTOR fails to begin or execute the PROJECT with reasonable diligence **WITHOUT INTERRUPTION**, and in a good and workmanlike manner, OWNER, may, at its option, upon three (3) days notice in writing to CONTRACTOR, terminate the CONTRACT. Without prejudice to any other remedy it may have, OWNER may take control of the PROJECT for the purpose of completing the same under the terms hereof, either by its own employees or by other independent contractor. If OWNER takes control of the PROJECT, CONTRACTOR shall be entitled, upon OWNER'S completion of the PROJECT, to the difference between the contract price and the reasonable cost and expense incurred by OWNER in finishing said PROJECT. If such cost and expense should exceed the CONTRACT price, CONTRACTOR or Bonding

Company agrees to pay the excess to OWNER as Liquidated Damages. (See also Part V, Special Conditions, Paragraph 9, Liquidated Damages, Page V-3)

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

11. **NOTICES:** Notices hereunder shall be sent to the respective addresses of the parties, set out above, but all communications given CONTRACTOR'S foremen on the job by OWNER'S representatives shall be sufficient, except as to matters required to be in writing by this CONTRACT.
12. **INDEMNITY:** FOR FULL INDEMNITY SEE GENERAL CONDITION 56. **CONTRACTOR shall indemnify, defend and hold harmless OWNER, ENGINEER, their designated agents, and their affiliated companies, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature whether arising before or after completion of the PROJECT hereunder and in any manner directly or indirectly caused or occasioned by reason of any negligence, whether active or passive, of CONTRACTOR, Subcontractor or of anyone acting under its direction, control, or on its behalf in connection with or incident to the work performed under this CONTRACT. The indemnity contained at GENERAL CONDITION 56 will control. The Indemnity is in addition to any insurance required of CONTRACTOR under this CONTRACT.**
13. **COMPLIANCE WITH LAW:** CONTRACTOR agrees to comply with all laws, orders, executive orders, rules or regulations of any and all local, state (Texas) and federal government bodies or agencies, including without limitation those pertaining to social security, tax withholdings, sales taxes, safety, health, old age pension and unemployment compensation, all laws and regulations pertaining to wages, hours and overtime, equal employment opportunities and all others applicable to the PROJECT whether or not herein specifically specified. Before final settlement, CONTRACTOR shall satisfy the OWNER of the payment and release of all debts, taxes, liens, claims, charges and obligations arising by operation of law, or otherwise, out of its performance of the work. OWNER may withhold funds due CONTRACTOR hereunder or otherwise, without interest, to assure itself of the discharge of all such obligations, or to satisfy any provisions of law relating to claims against CONTRACTOR.
14. **REPORTING REQUIREMENT FOR BUILDING OR CONSTRUCTION PROJECTS FOR GOVERNMENTAL ENTITIES:** CONTRACTOR shall comply with the reporting requirements for building or construction projects for Governmental entities as required by 28 Texas Administrative Code, Section 110.110 effective September 1, 1994, and all subsequent amendments.

CONTRACTOR is responsible for obtaining the reporting requirements for Workers' Compensation Insurance coverage and shall adhere to the requirements contained within the regulations of the Texas Workers' Compensation Commission.

15. **PAYMENT:** Progress payments will be made to the CONTRACTOR on a monthly basis upon the approval of monthly invoices by the OWNER'S representative. Progress payments do not indicate acceptance of the PROJECT by the OWNER. Monthly progress payments will be subject to a 10% retainage. Upon completion of the PROJECT, issuance of an ENGINEER'S completion certificate, and acceptance of the PROJECT by the OWNER, subject to any requirements for the maintenance of retainage, OWNER agrees to pay CONTRACTOR the total amount of the bid specified on the bid form as may be amended by appropriate change order issued by OWNER to CONTRACTOR, and subject to any liquidated damages due to OWNER. Acceptance of completion on this project is based solely on the CONTRACTOR achieving and maintaining the levee elevation denoted on the drawings.
  
16. **INTERPRETATION:** This CONTRACT including the plans, specifications and instructions and listed Contract Documents attached or identified separately, constitutes the entire agreement between the parties. No other conversations, BIDS, memoranda, or other matter shall vary, alter, or interpret the terms hereof. The captions in these instruments are for convenience of the parties in identifications of the several provisions and shall not constitute a part of the agreement nor are considered interpretive thereof. Failure of OWNER to exercise any option, right or privilege hereunder, or to demand compliance as to any obligation or covenant of CONTRACTOR or acceptance of the PROJECT and payment shall not constitute a waiver of any such right, privilege or option, or of the strict performance hereof, unless waiver is expressly required in such event, or is evidenced by properly executed written instrument.
  
17. **FORCE MAJEURE:** Neither party shall be considered in default in performance of its obligation under this Contract if delayed by Force Majeure (as described herein). Force Majeure shall include, but not be limited to hostilities, restraint of rulers or peoples, revolution, civil commotion, strike, epidemic, fire, flood, windstorm, explosion, embargo, or any law, proclamation, regulation, or ordinance of any Government, or any cause, whether of the same or different nature, existing or future, which is beyond the control of the parties hereto. It shall be the sole responsibility of the party so affected by Force Majeure to take all reasonable steps necessary to eliminate the cause of any delay but not to the extent of assenting to unreasonable demands of the third party. Nothing herein contained shall alter or vary OWNER'S right to terminate this Contract as hereinabove provided. Notice of Force Majeur must be given within 10 days of the Force Majeur event. See GENERAL CONDITION 58.

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

The Contract Documents consists in the whole of the following:

Advertisement for Bids

Information for Bidders

General Contract

General Conditions

Special Conditions

Scope of Work

Bid Form

Corporate Resolution

Bid Bond

Payment Bond

Performance Bond

Information Required of Bidders

2010 Davis-Bacon Wage Rate

Contractor's Affidavit and Waiver of Lien

Insurance Requirements and Certificate of Insurance

Technical Specifications

Project Drawings

Applicable Addenda and Change Orders

Vendor's Conflict of Interest Questionnaire

Work Plan

19. **TIME IS OF THE ESSENCE OF THIS CONTRACT.** CONTRACTOR agrees to complete the Project in its entirety by the hereinafter-defined **Completion Date of May 30, 2021.**

SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

20. **LIQUIDATED DAMAGES** – The contract price will be \$500.00 for each and every day past the completion dates stated above.

**AS A POLITICAL SUBDIVISION OF THE STATE OF TEXAS, NOTHING CONTAINED HEREIN SHALL BE CONSTRUED AS A WAIVER OF OWNER'S GOVERNMENTAL IMMUNITY BY THE SABINE NECHES NAVIGATION DISTRICT.**

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written in Jefferson County, Texas.

Contract is for the amount of \$ \_\_\_\_\_.

EXECUTED in duplicate originals this \_\_\_th day of December 2020.

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

**Contract Attachment No. 1**  
**Additional Terms and Conditions**

**State Auditor Clause**

By executing this CONTRACT, the CONTRACTOR accepts the authority of the State Auditor's Office, under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received pursuant to this CONTRACT. The CONTRACTOR shall comply with and cooperate in any such investigation or audit. The CONTRACTOR agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The CONTRACTOR also agrees to include a provision in any subcontract related to this contract that requires the SUBCONTRACTOR to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received pursuant to the subcontract.

**Financial Records**

The CONTRACTOR and its subcontracted parties shall maintain satisfactory financial accounting documents and records, including copies of invoices and receipts, and shall make them available for examination and audit by the EXECUTIVE ADMINISTRATOR of the BOARD. Accounting by the CONTRACTOR and its subcontracted parties shall be in a manner consistent with generally accepted accounting principles.

**No Debt Against the State**

This CONTRACT and Agreement shall not be construed as creating any debt by or on behalf of the State of Texas and the BOARD, and all obligations of the State of Texas are subject to the availability of funds. To the extent the performance of this CONTRACT transcends the biennium in which this CONTRACT is entered into, this CONTRACT is specifically contingent upon the continued authority of the BOARD and appropriations therefore.

**Licenses, Permit, and Insurance**

For the purpose of this CONTRACT, the CONTRACTOR will be considered an independent CONTRACTOR and therefore solely responsible for liability resulting from negligent acts or omissions. The CONTRACTOR shall obtain all necessary insurance, in the judgment of the CONTRACTOR, to protect themselves, the BOARD, and employees and officials of the BOARD from liability arising out of this CONTRACT. The CONTRACTOR shall indemnify and hold the BOARD and the State of Texas harmless, to the extent the CONTRACTOR may do so in accordance with state law, from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by the CONTRACTOR, arising out of the activities under this CONTRACT.

SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

The CONTRACTOR shall be solely and entirely responsible for procuring all appropriate licenses and permits, which may be required by any competent authority for the CONTRACTOR to perform the subject PROJECT.

EXECUTED in duplicate originals this \_\_\_th day of December 2020.

\_\_\_\_\_  
(OWNER)

\_\_\_\_\_  
(CONTRACTOR)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

**IV. GENERAL CONDITIONS - TABLE OF CONTENTS**

<b>1.</b>	<b>DEFINITIONS .....</b>	<b>4</b>
<b>2.</b>	<b>TIME AND ORDER OF COMPLETION .....</b>	<b>6</b>
<b>3.</b>	<b>INSPECTION AND RIGHT OF ACCESS .....</b>	<b>6</b>
<b>4.</b>	<b>TO REMEDY DEFECTIVE WORK .....</b>	<b>7</b>
<b>5.</b>	<b>TO ORDER MODIFICATIONS OF METHODS AND EQUIPMENT .....</b>	<b>8</b>
<b>6.</b>	<b>LINES AND GRADES .....</b>	<b>8</b>
<b>7.</b>	<b>TO DEFINE TERMS AND EXPLAIN PLANS.....</b>	<b>9</b>
<b>8.</b>	<b>CONTRACTOR'S FUNCTION .....</b>	<b>9</b>
<b>9.</b>	<b>MATERIALS, APPLIANCES, EMPLOYEES.....</b>	<b>10</b>
<b>10.</b>	<b>CONSTRUCTION SCHEDULE.....</b>	<b>10</b>
<b>11.</b>	<b>CUTTING, PATCHING, AND OWNER'S FACILITIES.....</b>	<b>11</b>
<b>12.</b>	<b>CONTRACTOR'S ADDRESS AND NOTICES .....</b>	<b>11</b>
<b>13.</b>	<b>PERSONAL ATTENTION OF CONTRACTOR .....</b>	<b>11</b>
<b>14.</b>	<b>CONTRACTOR INFORMED AS TO CONDITIONS.....</b>	<b>12</b>
<b>15.</b>	<b>SUBCONTRACTS.....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>16.</b>	<b>COLLATERAL WORK .....</b>	<b>13</b>
<b>17.</b>	<b>COORDINATION WITH OTHER CONTRACTORS .....</b>	<b>13</b>
<b>18.</b>	<b>MUTUAL RESPONSIBILITY OF CONTRACTORS .....</b>	<b>14</b>
<b>19.</b>	<b>CONTRACTOR RESPONSIBLE FOR CLAIMS .....</b>	<b>14</b>
<b>20.</b>	<b>INSURANCE REQUIREMENTS.....</b>	<b>14</b>
<b>21.</b>	<b>INTENTIONALLY LEFT BLANK.....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>22.</b>	<b>CONTRACTOR'S RESPONSIBILITY FOR SAFETY .....</b>	<b>15</b>
<b>23.</b>	<b>PERFORMANCE AND PAYMENT BONDS .....</b>	<b>15</b>



SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

24.	WORK PERFORMED AT CONTRACTOR'S RISK .....	16
25.	INFRINGEMENT OF PATENTS AND ROYALTIES .....	16
26.	REMOVAL OF EQUIPMENT OR MATERIALS .....	17
27.	ASSIGNMENT OF CONTRACT .....	17
28.	SUSPENSION OF WORK IF CONTRACT IS VIOLATED.....	17
29.	DELAYS .....	18
30.	INDEBTEDNESS AND LIENS.....	18
31.	PERMITS, LICENSES AND REGULATIONS .....	19
32.	TAXES .....	19
33.	LANDS FOR CONSTRUCTION PURPOSES.....	19
34.	REQUIREMENTS FOR CONTRACTOR'S EMPLOYEES.....	20
35.	CHARACTER OF EMPLOYEES .....	20
36.	SUPERINTENDENCE AND SUPERVISION.....	20
37.	WORKMEN TO BE USED .....	20
38.	NIGHT WORK.....	20
39.	CAMPS AND SANITARY CONVENIENCES .....	21
40.	INTOXICANTS .....	21
41.	PROTECTION OF HIGHWAYS AND RAILROADS .....	21
42.	USE OF EXPLOSIVES.....	22
43.	CLEANING UP.....	22
44.	PROTECTION OF WORK AND PROPERTY .....	22
45.	INDEPENDENT CONTRACTOR .....	23
46.	COMPLIANCE WITH PRICE REGULATION.....	23
47.	ACCOUNTING AND RECORDS .....	24

SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

<b>48.</b>	<b>CHANGES IN THE PROJECT .....</b>	<b>24</b>
<b>49.</b>	<b>CLAIMS FOR EXTRA COST .....</b>	<b>25</b>
<b>50.</b>	<b>PAYMENT .....</b>	<b>25</b>
<b>51.</b>	<b>TESTING AND ACCEPTANCE .....</b>	<b>27</b>
<b>52.</b>	<b>CONTRACTOR’S WARRANTY .....</b>	<b>27</b>
<b>53.</b>	<b>CERTIFICATES OF INSPECTION AND WARRANTIES.....</b>	<b>28</b>
<b>54.</b>	<b>OCCUPATIONAL SAFETY &amp; HEALTH ACT OF 1970 .....</b>	<b>28</b>
<b>55.</b>	<b>DRAWINGS AND SPECIFICATIONS ON THE PROJECT SITE .....</b>	<b>28</b>
<b>56.</b>	<b>INDEMNITY.....</b>	<b>29</b>
<b>57.</b>	<b>TERMINATION.....</b>	<b>32</b>
<b>58.</b>	<b>FORCE MAJEURE.....</b>	<b>36</b>
<b>59.</b>	<b>APPLICABLE LAW AND VENUE.....</b>	<b>37</b>
<b>60.</b>	<b>WAIVER.....</b>	<b>37</b>
<b>61.</b>	<b>SPECIAL CONDITIONS.....</b>	<b>37</b>

#### IV. GENERAL CONDITIONS

##### 1. Definitions

- A. The CONTRACT Documents consist of Advertisement for Bids, Information for Bidders, General CONTRACT, General Conditions, Special Conditions, Exhibits and Drawings and other documents listed in paragraph 18 of the GENERAL CONTRACT.
- B. The Owner is Sabine Neches Navigation District of Jefferson County, Texas.
- C. Whenever the word "Owner" or "Company" is used it shall be understood to refer to the Owner identified as such in this CONTRACT.
- D. The word "Engineer" shall mean Burrow-Global Engineering, 350 Pine Street, Beaumont, Texas 77701, Telephone (409) 239-5210. Wherever the words Construction Manager, Project Representative, or Owner's Representative are used, it refers to a person designated by the Engineer.
- E. The word "Contractor" or the expressions "Party of the Second Part" or "Second Party" shall mean the person, persons, partnership, company, or corporation entering into this CONTRACT for the performance of the work required by it.
- F. The words "Surety" or "Sureties" shall mean the surety company or the bondsmen or party or parties who have made secure the fulfillment of this CONTRACT by a Bond, and whose signatures are attached to said Bond.
- G. The word "Proposal" shall mean the offer of the Contractor to do the work contemplated under this CONTRACT at the price or prices set forth therein.
- H. The word "Drawings" shall mean, collectively, all the drawings attached to the CONTRACT Documents and such supplementary drawings as the Engineer may issue from time to time in order to elucidate said Drawings, to show details that are not shown thereon, or to cover changes in the Project.
- I. The words "CONTRACT Price" shall mean the total of all payments that are to be paid to the Contractor for the work to be done under this CONTRACT (estimated in the case of unit price or cost plus work).
- J. Wherever the word "Manufacturer" is used it refers to a person, partnership, or corporation who is furnishing material or equipment to either the Owner or the Contractor or both.

SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

- K. The term Subcontractor as employed herein includes only those having a direct CONTRACT with the Contractor and it includes one who furnishes material worked to a special design according to the Drawings or Specifications of this Project, but does not include one who merely furnishes material not so worked.
- L. Written Notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.
- M. The term Work of the Contractor or Subcontractor includes labor or materials or both, equipment, transportation, or other facilities necessary to complete the CONTRACT.
- N. All Time Limits stated in the CONTRACT Documents are of the essence of the CONTRACT.
- O. The laws of Texas shall govern the construction of the CONTRACT, and venue for any controversies shall be in Jefferson County, Texas.
- P. The words WORK PLAN shall mean a detailed explanation of how the contractor proposes to execute the Project WORK from mobilization to demobilization. The WORK PLAN shall include details of, but not limited to, the following items:
- Mobilization
  - Perform site preparation
  - Stripping/Vegetation Removal
  - Perimeter levee construction w/fabric
  - Demobilization
- Q. Wherever in this CONTRACT the words Directed, Required, Permitted, Ordered, Designated, Prescribed, or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription, etc. of the Engineer or Owner is intended. Similarly, the words Approved, Considered, Necessary, Acceptable, Satisfactory, or words of like import, shall mean approved or considered necessary by, or acceptable or satisfactory to the Engineer or Owner unless another meaning is plainly intended.
- R. Where reference is made in these GENERAL CONDITIONS or DRAWINGS to specifications compiled by other agencies, organizations or departments, such reference is made for expediency and standardization and such specifications referred to are hereby made a part of these GENERAL CONDITIONS.

- S. Certificate of coverage ("certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84) showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the Project.
- T. 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 OWNER.
- U. Persons providing services on the Project - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person Contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

2. Time and Order of Completion

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

3. Inspection and Right of Access

SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

- A. The Owner and Engineer contemplate and the Contractor hereby agrees to a thorough, minute inspection by the Owner and Engineer, or by any of their agents, of all work and material furnished under this CONTRACT.
- B. The Contractor shall furnish to the Owner and Engineer or to any of their agents, access at all times to the Project and to the premises used by the Contractor, and shall provide them every reasonable facility for the purpose of inspection, even to the extent of discontinuing portions of the Project temporarily, or of uncovering or taking down portions of finished work.
- C. When finished work is ready for the purpose of inspection, the Contractor shall bear the entire expense incident thereto in the event that the said work is found to be defective. The Owner shall pay the cost incident thereto in the event that the work is found to be in accordance with the Scope of Work and Drawings. In the latter case, the uncovering or taking out of and replacement of materials shall be paid for by the Owner on the basis of actual direct cost of materials, labor and incidental expense, plus reasonable rental prices for transportation equipment and heavy equipment. No percentage for the Contractor's fee shall be added to actual direct cost of material, labor and incidental expense or equipment rental prices. Where the work exposed is found to be in accordance with the Specifications and Drawings, the cost of replacing the covering or the making good of any of the parts removed shall be paid for by the Owner on the basis of prices set forth in the Proposal in the case of unit price work or on the basis of actual cost of materials, labor and incidental expense and equipment rentals as set forth in the two preceding sentences in all other cases. If the Contractor shall fail to replace any defective work or materials after reasonable notice, the Engineer may cause such defective work or materials to be replaced and the expense thereof shall be deducted from the amount to be paid the Contractor.

4. To Remedy Defective Work

- A. If the work or any portion thereof shall be damaged in any way, excepting by the acts of the Owner or the Engineer, or if defects not readily detected by the proper inspection shall develop before the final completion and acceptance of the whole Project, the Contractor shall forthwith remedy such damage or defects as part of the SOW and Bid Price in a manner satisfactory to the Owner and/or Engineer.
- B. Neither the Engineer, nor any of his assistants or agents shall have any power to waive any of the obligations of the Contractor or any of the obligations of this CONTRACT for the furnishing by the Contractor of

suitable material and for the Contractor's performing work to the Owner's satisfaction as herein described

- C. The Owner shall have the right to direct the manner in which all work under this CONTRACT shall be conducted insofar as may be necessary to secure the safe and proper progress and the specified quality of the Project. All work shall be done and all material shall be furnished to the satisfaction and approval of the Owner.
- D. Whenever, in the opinion of the Owner, the Contractor has made marked departures from the schedule of completion laid down in the Proposal or when unforeseen circumstances force a departure from the said schedule, the Owner, in order to assure the carrying out of the schedule and the completion of the Project in accordance with the CONTRACT, shall direct the order and method of conducting the work.
- E. Additional drawings and explanations to exhibit or illustrate details may be provided by the Engineer and shall be so provided whenever necessary, and if consistent with the Drawings and Scope of Work shall be binding upon the Contractor. The written decision of the Engineer as to the true construction and meaning of the Drawings and Scope of Work and of such additional drawings and explanations shall be binding upon the Contractor.

5. To Order Modifications of Methods and Equipment

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

6. Lines and Grades

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

7. To Define Terms and Explain Plans

- A. The various parts of the CONTRACT are intended to be complementary to each other, but should any discrepancy appear, or any misunderstanding arise as to the import of anything contained therein, the decision and explanation of the Owner shall be final and binding. The correction of any errors or omissions of the Drawings and Specifications may be made by the Engineer, when such correction is necessary to a reasonable interpretation of the Drawings and Specifications as a whole.
- B. Whenever, in the Scope of Work or on the Drawings which are a part of this CONTRACT or which may be furnished to the Contractor for directing his work, the terms or descriptions of various qualities of workmanship, material, structures, processes, plant, or other features of the CONTRACT are described in general terms, the meaning or fulfillment of which must depend upon individual judgment, the question of the fulfillment of the Scope of Work requirements shall be decided by the Engineer, and said material shall be furnished, said work shall be done, and said structure, process, plant or feature shall be constructed, furnished or carried on in full and complete accordance with the Engineer's interpretation of the same and to his full satisfaction and approval, provided such interpretation is not in direct conflict with the Drawings and Scope of Work.
- C. Matters shown either on the Drawings or in the Scope of Work shall be done and furnished as if shown in both except where expressly accepted either in the Scope of Work or on the Drawings. Figured dimensions shall in all cases be taken in preference to scale measurements, and detailed drawings consistent with general drawings in preference to general drawings of the same part of the Project.

8. Contractor's Function



- A. The Contractor shall furnish and provide all material, labor, supervision, tools, plant, apparatus, conveyances, false-work, scaffolding, cribbing, rigging, water, air, steam, electrical energy, equipment, and incidental expense for accomplishing the work covered by this CONTRACT, except the materials and services specifically provided in the Scope of Work to be furnished by the Owner.
- B. After the Contractor has accepted materials, equipment and services furnished by the Owner as being in good condition and correct quantity at time of delivery, the Contractor shall be responsible for their safety from loss or damage of any nature until the finished structures and/or surplus materials are accounted for and accepted by the Owner. Contractor will take appropriate steps to protect the Project under construction from damage by the elements or otherwise.

9. Materials, Appliances, Employees

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

10. Construction Schedule

SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

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

11. Cutting, Patching, and Owner's Facilities

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

12. Contractor's Address and Notices

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

13. Personal Attention of Contractor

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

**14. Contractor Informed as to Conditions**

- A. **The Contractor states that all the available records have been examined; that a field examination of the site and right of way has been conducted; and that the subsurface conditions including water content, pipelines, utilities, etc. to be encountered, the character of equipment and facilities needed for the execution of the Project, the location, and suitability of all construction materials, the quantities in the various sections of the Project, the local labor conditions and all other matters in connection with the Project and services to be performed under this CONTRACT have been thoroughly studied. The OWNER, for lack of said knowledge of the above, will pay no claims.**
- B. Any records of subsurface condition, water records or other observations that may have been made by the Engineer or the Owner have been made with reasonable care and accuracy. Such records may be made available to the Contractor for its information, but there is neither expressed nor implied guarantee as to accuracy of the records nor any interpretation of them contained therein. The Contractor recognizes this limitation and stipulates that its opinions and interpretations regarding the character of materials to be excavated have been derived from an inspection of the ground and studies of available soil records.
- C. The Contractor further states that the price or prices contained in the Proposal are based on its own knowledge and judgment of the conditions and hazards involved and not upon any representation of the Owner or the Engineer.

**15. Subcontracts**

- A. As soon as practicable and before awarding any sub-Contracts, the Contractor shall notify the Owner in writing of the names of the

subcontractors proposed for the principal parts of the Project, and for such other parts as the Owner may direct, and shall not employ any to whom the Owner may have an objection.

- B. The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by him, as he is for the acts and omissions of persons directly employed by him. The Contractor shall be responsible for the coordination of the trades, subcontractors, and material men engaged upon his work.
- C. The Owner and Engineer will not undertake to settle any differences between the Contractor and his subcontractors or between subcontractors.
- D. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Project to bind subcontractors to the Contractor by the terms of the CONTRACT Documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating subcontract that the Owner may exercise over the Contractor under any provisions of the CONTRACT Documents.

16. Collateral Work

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

17. Coordination with other Contractors

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

may develop in the other Contractor's work after the execution of the Contractor's work.

18. Mutual Responsibility of Contractors

- A. The Contractor agrees that if, by any negligent act or omission or by defective or ill-timed work or by its failure to perform any of its obligations under the CONTRACT, damage is caused to another Contractor, the Contractor will pay to the Owner for the account of such other Contractor the amount of damages determined by the Engineer to be due the other Contractor. The Contractor further agrees that if damage is so caused to itself by another, the Contractor will accept in satisfaction thereof the amount so determined by the Engineer to be due, provided in either case that such other Contractor is bound to the Owner by similar stipulations. This Article shall not be construed to cover damages for personal injuries, including death.
- B. If such separate Contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor, who shall defend such proceedings at his own expense and, if any judgment against the Owner arise wherefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Owner.

19. Contractor Responsible for Claims

- A. **The complete Indemnity is contained in Paragraph 56 which paragraph shall govern. Contractor shall indemnify, defend and hold harmless Owner, Engineer, their designated agents, and their affiliated companies, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature whether arising before or after completion of the Project hereunder and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of Contractor, or of anyone acting under its direction, control, or on its behalf in connection with or incident to the work performed under this CONTRACT.**
- B. In the event that any arrangement is made whereby Contractor uses employees of the Owner, they shall, while engaged on this Project, be considered for all purposes as employees, servants and agents of the Contractor and not of the Owner, irrespective of who pays them.

20. Insurance Requirements

- A. Insurance requirements are detailed in **Exhibit J** of this document.
  - B. If Contractor uses a chartered water borne vessel in the operations hereunder, Charterer's Legal Liability Insurance, including full Collision and Tower's Liability, covering bodily injury and property damage with a combined single limit of at least \$1,000,000 or the value of the vessel, whichever is greater; or, if Contractor uses an owned water borne vessel, Hull and Machinery Insurance, including full Collision and Tower's Liability, and Protection and Indemnity Insurance covering bodily injury and property damage, each with a combined single limit of at least \$1,000,000 or the value of the vessel, whichever is greater.
  - C. Physical damage insurance maintained by Contractor for loss of or damage to equipment and machinery used in the performance of work set forth in this CONTRACT, including loss or damage during loading, unloading and while in transit, shall, name Owner as an Additional Insured. Contractor agrees to waive and agrees to have his insurers waive any rights of subrogation as respects deductibles under such policies and as respects damages to equipment, including the loss of use thereof, whether insured or not.
  - D. **Any and all subcontractors are required to meet the insurance requirements of the Contractor, as detailed in Exhibit J.**
21. Contractor's Responsibility for Safety
- A. Contractor agrees that with respect to his furnishing the materials, equipment, and labor under this CONTRACT, all work performed by Contractor shall be in accordance with all applicable federal, state, local occupational safety laws and regulations.
  - B. Contractor will follow all Project site specific safety rules including, but not limited to, those pertaining to hot work, confined space entry, lock out / tag out, and work permits.
  - C. Contractor will provide a Project Specific Safety Plan to the Owners representative at the time of mobilization.
  - D. Contractor shall promptly report to Owner all accidents occurring to Contractor's employees or any other parties or property.
22. Performance and Payment Bonds

- A. The Contractor must deliver to the Owner and maintain for the duration of the Project an executed Performance Bond and Payment Bond in an amount of 100% of the total amount of the CONTRACT sum as security for the faithful performance of this CONTRACT.
- B. The sureties of all bonds shall be such surety company as the Owner approves. The Owner, prior to execution of the formal CONTRACT, must approve these bonds.
- C. Should the Contractor's surety, even though approved and accepted by the Owner, subsequently become insolvent, bankrupt, or otherwise fail, the Contractor shall furnish a new qualified bond or bonds, in another company approved by the Owner, without additional cost to the Owner. The new bond or bonds shall be executed under the same terms and conditions as the original bond or bonds.

23. Work Performed at Contractor's Risk

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

24. Infringement of Patents and Royalties

- A. **The complete Indemnity is contained in Paragraph 56 which paragraph shall govern The Contractor shall assume all liability and fully indemnify and save harmless the Owner, their successors or assigns, from and against all claims, suits, proceedings, damages, losses, expenses, fees, and royalties, arising from any infringement, real or claimed, of any patent on any article, machine, manufacture, structure, composition, arrangement, improvement, design, device, methods or process embodied or used in the performance of this CONTRACT. The Owner, its successors and assigns, will give written notice of all such claims and patent infringement suits or proceedings instituted against it to the Contractor, who shall defend same, and will give the Contractor authority, assistance and all available information to enable the Contractor to do so.**

25. Removal of Equipment or Materials

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

26. Assignment of CONTRACT

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

27. Suspension of Work if CONTRACT is Violated

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



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

28. Delays

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

29. Indebtedness and Liens

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

30. Permits, Licenses and Regulations

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

31. Taxes

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

32. Lands for Construction Purposes

- A. The Contractor may have the use of lands, for rights-of-way purposes, which are contiguous to the Project, which is either now owned by the Owner or to be secured by it, and which are not necessary for the Owner's business or the execution of collateral work.
- B. The Contractor at its cost shall furnish all other lands or the use of lands necessary or deemed desirable for the Contractor's operations. All costs for

damages to property, crops, etc. caused by the Contractor's ingress or egress to the Owner's right-of-way shall be borne solely by the Contractor.

33. Requirements for Contractor's Employees

- A. The Contractor's cars and trucks, and those of its employees, shall be parked in areas expressly set aside and designated as parking areas.

34. Character of Employees

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

35. Superintendence and Supervision

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

36. Workmen to be Used

- A. Attention is called to the fact that certain portions of this Project call for workmen skilled not only in their trade but specialized in the particular task required. The Contractor shall provide that such work shall be done by workmen who are skilled and have specialized in the work to which they are assigned.
- B. The Contractor shall use local material, equipment, subcontractors and workmen, when to do so will not result in additional expense to Contractor.

37. Night Work

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

38. Camps and Sanitary Conveniences

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

39. Intoxicants

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

40. Protection of Highways and Railroads

- A. The Contractor shall protect public roads, waterways and bridges which may be damaged by, interfered with, or given undue wear by reason of the work done under this CONTRACT, and shall repair or replace them if damaged, at its own expense, to the satisfaction of the governmental authorities or the owners thereof.
- B. The Contractor shall, unless otherwise specifically provided for, make suitable arrangements with governmental authorities and railroads for the construction of all structures underneath roads and railroads or on railroad

rights-of-way to the end that the public using the highways and movement of trains shall be safe-guarded from accident and/or delay.

- C. Where questions arise as to safe methods or suitable protection the Contractor shall confer with the Owner but responsibility for results shall rest with the Contractor.

41. Use of Explosives

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

42. Cleaning Up

- A. The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by his employees or work, and at the completion of the Project he shall remove all his rubbish from and about the building and all his tools, scaffolding and surplus materials and leave his work "in good order" or its equivalent, unless more exactly specified. In case of dispute the Owner may remove the rubbish and charge the cost to the several Contractors, as the Owner shall determine to be just. Contractor shall submit his plan for disposal of waste material to Owner for his review and concurrence prior to any disposal of waste materials.
- B. As part of the work included in this CONTRACT, the Contractor shall completely remove and satisfactorily dispose of all temporary works to the extent directed. The Contractor shall tear down and dispose of all temporary buildings; shall remove or grade, to the extent directed, all embankments or cofferdams made for construction purposes, shall satisfactorily fill excavations as directed; shall remove all plant and equipment; shall satisfactorily dispose of all rubbish resulting from the operations under this CONTRACT and shall do all work necessary to restore the territory embraced within the site of the Contractor's operations to at least as good order and conditions as at the beginning of the Project under this CONTRACT.
- C. In no case during or after construction shall any form of rubbish, waste, or debris be dumped or allowed to fall into the waterway bayou or river.

43. Protection of Work and Property

SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

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

44. Independent Contractor

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

45. Compliance with Price Regulation

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

46. Accounting and Records

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

47. Changes in the Project

- A. If it becomes necessary or desirable to modify this CONTRACT and the Scope of Work herein contained and the Drawings, in a manner not materially affecting the substance thereof, or to make changes by altering, adding to or deducting from the Project, or to be done under this CONTRACT, the Owner may, without invalidating the CONTRACT, by an order in writing, order such changes or modifications to be made; and the changes shall be made accordingly, provided that in cases where such changes increase the cost of the Project and payment therefore is not covered by the prices bid for the various items, the Contractor shall be remunerated under a supplemental CONTRACT as hereinafter provided; and in case they shall diminish the cost of the Project proper, deduction from the CONTRACT Price shall be made. All such work shall be executed under the conditions of the original CONTRACT except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.
- B. Except for minor modifications in the Project not involving extra cost and not inconsistent with the purposes of the Project, and except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order from the Owner authorizing the extra work or change; and no claim for an addition to the CONTRACT

Price shall be valid unless so ordered. Changes involving an increase in the Project will be ordered by the Owner in the form of written Additional Work Orders in which the consideration will be set forth. All such work shall be executed under the provisions and conditions of the original CONTRACT and of the Bond accompanying it.

- C. The value of any such additional work shall be determined in one or more of the following ways:
1. By estimate and acceptance in separated lump sum
  2. By unit Prices stated in the CONTRACT or subsequently agreed upon
  3. On the basis of cost plus a percentage fee stated in the CONTRACT or subsequently agreed upon
  4. On the basis of cost plus fixed fee stated in the CONTRACT or subsequently agreed upon

48. Claims for Extra Cost

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

49. Payment

Amounts Payable by Contractor to Owner. From any sum due to Contractor, Owner without waiver or limitation of any of its rights under the CONTRACT or at law shall be entitled to deduct any or all amounts owed by Contractor to Owner pursuant to any provision of the CONTRACT.

- A. Progress payments will be allowed monthly as described in Information for Bidders, Page II-5. Applications for monthly progress and final payments will be in a format consistent with the sample invoice shown in **Exhibit M**. Every monthly request for a progress payment shall be accompanied by a data summary of the progress and percentage complete by Stationing Numbers.



Once the Contractor has made application for payment as above, the Owner shall, not later than the date when the payment falls due, issue a Certificate for Payment to the Contractor for such amount as he decides to be properly due, or state in writing his reasons for withholding a certificate. Acceptance of completion on this project is based solely on the CONTRACTOR achieving and maintaining the levee elevation denoted on the drawings.

- B. Payment Withheld. Owner may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any payment to such extent as may be necessary to protect itself from loss on account of
- \*Defective work not remedied or the breach of any of the CONTRACT Documents.
  - \*Claims filed against Owner or the location or reasonable evidence indicating probable filing of such claims,
  - \*Failure of the Contractor to make payments to Subcontractors or to make payments for material or labor,
  - \*Reasonable doubt that the Project can be completed for the unpaid balance of the CONTRACT Date,
  - \*Reasonable indication that the Project will not be completed prior to the Completion Date.
- C. When the reason for the withholding are removed or the Contractor provides a surety bond satisfactory to Owner which will protect Owner in the amount withheld, payment may be made for the amount withheld because of them.
- D. No Certificate issued nor payment made to the Contractor, nor partial or entire use or occupancy of the Project by the Owner, shall be an acceptance of any work or materials not in accordance with this CONTRACT. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, other than those arising from the unsettled liens, from faulty work appearing after final payment or from failure to comply with Drawings and Specifications and the terms of any special guarantees specified in the CONTRACT and of all claims by the Contractor, except those previously made and still unsettled.
- E. Final payment by the Owner shall constitute a waiver of all claims by the Owner except those arising from:
1. Unsettled liens
  2. Faulty or defective work discovered after completion

3. Failure of the work to comply with the CONTRACT Documents
  4. Special guarantee terms required by CONTRACT Documents
  - E. The acceptance of payment shall constitute a waiver of all claims by the Contractor against the Owner, the Engineer, their associates, or designated agents except those previously made in writing and still unsettled.
  - F. Contractor shall submit an “All Bids Paid Affidavit” upon completion of the Project and prior to final payment.
  - G. The final payment, including retainage withholdings, will be made only upon receipt of proof of no recorded liens or privileges against the Project and receipt of notarized release of all claims by Contractor as above described.
50. Testing and Acceptance
- A. Acceptance of all work shall be based on the satisfactory results of a testing program outlined to insure compliance with the specifications. The Engineer shall determine the type tests and the frequency of the tests. The results of all tests will be made available to the Contractor, but interpretation of results and acceptance shall be the responsibility of Engineer.
51. Contractor’s Warranty
- A. The Contractor shall warrant all materials, equipment, and related items furnished and all work performed for a period of one year from the date of written acceptance of the Project.
  - B. During the period of warranty the Contractor shall promptly correct any defects in equipment, materials, or workmanship without cost to the Owner. The Owner shall give notice to the Contractor of any observed defects with reasonable promptness. If written notice is given before the end of the one-year warranty period, the warranty will be honored notwithstanding what period of time is required to correct the defect.
  - C. The warranty hereby given by Contractor as to materials, equipment and related items furnished and all work performed shall be in addition to and warranties given by manufacturers, fabricators, supplies or dealers as to any material, equipment or related items.

52. Certificates of Inspection and Warranties

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

53. Occupational Safety & Health Act of 1970

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

54. Drawings and Scope of Work on the Project Site

- A. The Contractor shall keep one copy of all drawings and Scope of Work on the Project site, in good order, available to the Owner and to his representative.
- B. All drawings, Scope of Work and copies thereof furnished by the Owner are his property. They are not to be used on other work and, with the exception of the signed CONTRACT set, are to be returned to him on request, at the completion of the Project.
- C. The Contractor will be furnished, free of charge, all copies of drawings and specifications reasonably necessary for the execution of the Project.
- D. The Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in his own work or in that of any other Contractor, four (4) copies, checked and approved by him, of all shop or installation drawings and schedules required for the work of the various trades. The Engineer shall check and review, with reasonable promptness, such schedules and drawings only for conformance with the design concept of the Project and compliance with the information given in the CONTRACT Documents. The Contractor shall make any corrections required by the Engineer, file with him two (2) corrected copies and furnish such other copies as may be needed. The Engineer's review of such drawings or schedules shall

not relieve the Contractor from responsibility for deviations from drawings or specifications, unless he has, in writing, called the Engineer's attention to such deviations at the time of submission, and secured his written comments, nor shall it relieve him from responsibility for errors in shop drawings or schedules.

56. **INDEMNITY**

(a) **DEFINITIONS:**

(1) **"INDEMNIFIED PARTY" OR "INDEMNIFIED PARTIES" MEANS THE SABINE NECHES NAVIGATION DISTRICT, ITS PARTNERS, AFFILIATES, AND THE RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS OF THE FOREGOING.**

(2) **"DAMAGES" MEANS ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUITS, DAMAGES, LIABILITIES, FINES, PENALTIES, ASSESSMENTS, ENVIRONMENTAL RESPONSIBILITY COSTS OR INJUNCTIVE OBLIGATIONS, JUDGMENTS, LOSSES AND EXPENSES (INCLUDING WITHOUT LIMITATION EXPENSES, COSTS OR ATTORNEY'S FEES INCURRED FOR ANY INDEMNIFIED PARTY'S PRIMARY DEFENSE OR FOR ENFORCEMENT OF ITS INDEMNIFICATION RIGHTS).**

(b) **CONTRACTOR, TO THE MAXIMUM EXTENT PERMITTED BY LAW, SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD HARMLESS INDEMNIFIED PARTIES FROM AND AGAINST ANY DAMAGES WHICH MAY BE INCURRED BY OR ASSESSED AGAINST ANY INDEMNIFIED PARTY ON ACCOUNT OF:**

(1) **ANY PERSONAL INJURY, DISEASE OR DEATH OF ANY PERSON(S), DAMAGE TO OR LOSS OF ANY PROPERTY CAUSED BY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THE PROJECT, INCLUDING WITHOUT LIMITATION DAMAGES CAUSED BY OR ATTRIBUTABLE TO (I) THE SOLE NEGLIGENCE OF CONTRACTOR, ITS SUBCONTRACTORS, INVITEES OR SUPPLIERS (INCLUDING WITHOUT LIMITATION THE RESPECTIVE EMPLOYEES OR AGENTS OF THE FOREGOING); (II) THE CONCURRENT, CONTRIBUTORY OR SOLE NEGLIGENCE OF ANY INDEMNIFIED PARTY, CONTRACTOR, ITS SUBCONTRACTORS, INVITEES OR SUPPLIERS, OR THIRD PARTIES (INCLUDING WITHOUT LIMITATION THE RESPECTIVE EMPLOYEES OR AGENTS OF THE FOREGOING); OR (III) WHERE LIABILITY WITH OR WITHOUT**

**FAULT IS STRICTLY IMPOSED BY OPERATION OF LAW; OR**

**(2) ANY BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT OF CONTRACTOR CONTAINED HEREIN, INCLUDING WITHOUT LIMITATION, DAMAGES INCURRED BY ANY INDEMNIFIED PARTY DUE TO CONTRACTOR'S FAILURE TO FULLY COMPLY WITH THE INSURANCE REQUIREMENTS SET FORTH IN SECTION 10.2 AND EXHIBIT J.**

**(c) THOSE MATTERS WHICH ARE DETERMINED BY A FINAL NONAPPEALABLE JUDGMENT TO BE A RESULT OF THE SOLE NEGLIGENCE OR FAULT OF AN INDEMNIFIED PARTY AND NOT CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OR FAULT OF CONTRACTOR, ITS SUBCONTRACTORS, SUPPLIERS, INVITEES, OR THIRD PARTIES, SHALL BE EXCLUDED FROM CONTRACTOR'S DUTY TO INDEMNIFY THE INDEMNIFIED PARTIES. HOWEVER, IT IS THE INTENTION OF THE PARTIES THAT THE INDEMNITY OBLIGATIONS OF CONTRACTOR ARE WITHOUT REGARD TO WHETHER THE NEGLIGENCE, GROSS NEGLIGENCE, FAULT OR STRICT LIABILITY OF AN INDEMNIFIED PARTY IS A CONCURRENT OR CONTRIBUTORY FACTOR, AND SUCH OBLIGATIONS ARE INTENDED TO PROTECT THE INDEMNIFIED PARTIES AGAINST THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, GROSS NEGLIGENCE, FAULT OR STRICT LIABILITY. COMPANY EXPRESSLY RESERVES THE RIGHT TO PARTICIPATE IN ITS DEFENSE WITH COUNSEL OF ITS OWN CHOOSING. CONTRACTOR'S INDEMNITY OBLIGATIONS SHALL SURVIVE THE EXPIRATION, TERMINATION OR NONRENEWAL OF THIS AGREEMENT.**

**(d) CONTRACTOR SHALL DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST DAMAGES ARISING OUT OF, RESULTING FROM OR OTHERWISE CONNECTED WITH ANY FAILURE BY CONTRACTOR TO COMPLY WITH OR VIOLATION BY CONTRACTOR OF ANY FEDERAL, STATE, COUNTY OR MUNICIPAL LAWS, RULES, REGULATIONS, ORDERS OR ORDINANCES, INCLUDING WITHOUT LIMITATION, ALL FEDERAL, STATE AND LOCAL ENVIRONMENTAL, HEALTH AND SAFETY LAWS, RULES AND REGULATIONS, WHICH MAY OTHERWISE BE APPLICABLE TO OR IMPOSED IN CONNECTION WITH THE PERFORMANCE OF THE PROJECT, WITHOUT REGARD TO WHETHER CONTRACTOR MAY BE NEGLIGENT IN THE PERFORMANCE OF THE PROJECT, WITHOUT REGARD TO WHETHER CONTRACTOR'S ACTIONS MAY HAVE RESULTED IN STRICT LIABILITY IMPOSED BY OPERATION**

**OF LAW. CONTRACTOR SHALL FURTHER PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY DAMAGES ARISING OUT OF OR RESULTING FROM CONTRACTOR'S FAILURE TO COMPLY WITH APPLICABLE HEALTH AND SAFETY PROCEDURES OF COMPANY.**

**(e) CONTRACTOR SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES AGAINST ALL LIENS, CLAIMS AND DEMANDS (INCLUDING WITHOUT LIMITATION EXPENSES, COSTS OR ATTORNEY'S FEES INCURRED FOR ANY INDEMNIFIED PARTY'S PRIMARY DEFENSE OR FOR ENFORCEMENT OF ITS INDEMNIFICATION RIGHTS) WHICH ARISE IN CONNECTION WITH THE WORK OR MATERIALS SUPPLIED BY CONTRACTOR AND, UPON REQUEST BY OWNER, CONTRACTOR SHALL FURNISH OWNER WITH ANY AFFIDAVITS, RECEIPTS, WAIVERS, RELEASES, STATEMENTS OR OTHER EVIDENCE THAT COMPANY MAY REQUIRE TO SATISFY ITSELF THAT ALL SUCH CLAIMS, LIENS OR DEMANDS HAVE BEEN PAID AND DISCHARGED.**

**(f) CONTRACTOR SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES AGAINST CLAIMED OR ACTUAL INFRINGEMENT OR CONTRIBUTORY INFRINGEMENT OF ANY PATENT, OR INFRINGEMENT OF ANY COPYRIGHT OR TRADEMARK, OR PUBLIC DISCLOSURE OF ANY TRADE SECRET OR PROPRIETARY INFORMATION OWNED BY OR OTHERWISE LICENSED TO OWNER (INCLUDING WITHOUT LIMITATION EXPENSES, COSTS OR ATTORNEY'S FEES INCURRED FOR ANY INDEMNIFIED PARTY'S PRIMARY DEFENSE OR FOR ENFORCEMENT OF ITS INDEMNIFICATION RIGHTS), ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK OR THE USE OF THE MATERIALS OR EQUIPMENT FURNISHED BY CONTRACTOR FOR OR IN CONNECTION WITH THE PROJECT.**

**(g) CONTRACTOR'S INDEMNITY OBLIGATIONS SHALL NOT LIMIT AND SHALL NOT BE LIMITED BY THE INSURANCE COVERAGES (INCLUDING WITHOUT LIMITATION COMPANY'S ADDITIONAL INSURED STATUS) SET FORTH IN THE FOLLOWING SECTION.**

Other Indemnity Provisions Not Affected. The above provisions of this clause are fully without prejudice to any other liability or hold harmless provisions contained elsewhere in the CONTRACT and nothing in said other provisions shall be taken to limit Contractor's liability and obligations under this Article 13.

57. **TERMINATION**

57.1 Contractor's Default. If Contractor:

- a) becomes bankrupt or has a petition in bankruptcy presented against him, is granted a moratorium, or makes an arrangement with or an assignment in favor of his creditors, or
- b) has an execution levied on his goods, equipment or inventory, or
- c) assigns or delegates all or any part of the CONTRACT without the prior written consent of Owner, or
- d) has to the detriment of good workmanship or in defiance of Owner's instructions to the contrary entered into a Subcontract for any part of the CONTRACT, or
- e) repudiates or abandons definitely the CONTRACT, or
- f) fails to commence the Project within five (5) days after receipt of Notice to Proceed or has ceased to diligently execute the Project for ten (10) days after receiving from Owner written notice pursuant to Article 7 hereof, or
- g) fails to remove materials from the Site or to pull down and replace work for 10 days after receiving from Sabine Neches Navigation District written notice that the said materials or work have been condemned and/or rejected by Sabine Neches Navigation District, or
- h) does not continue with the work on the Project on account of loss of time, mechanical breakdown of the Construction Equipment for a period exceeding 14 (fourteen) consecutive calendar days or for any cumulative periods of mechanical breakdown exceeding 18 (eighteen) calendar days of 24 (twenty-four) hours each calculated as an aggregate of hours and decimals thereof, or
- i) fails to meet Completion Date or any other date or deadline mentioned in the CONTRACT, or
- j) does not comply in any other way with the terms and conditions of the CONTRACT, and Contractor has not within 10 (ten) days following Sabine Neches Navigation District's notice, remedied such non-compliance or corrected the deficiencies, or
- k) the Construction Equipment required in the performance of the work on the Project becomes a total loss (which term will include a constructive, arranged and/or compromised total loss) which cannot reasonably be repaired or replaced prior to the time that Contractor is still in a position to complete the Project prior to the Completion Date, or
- l) fails after explicit warning by Sabine Neches Navigation District to comply with accepted and/or prescribed safety standards, practices and/or requirements, or
- m) shall go into liquidation (other than a voluntary liquidation for purpose of amalgamation or reconstruction) or have a winding-up petition filed against it or a resolution for voluntary winding-up passed or a receiver or a manager of its business or undertaking duly appointed, or possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge,

then Sabine Neches Navigation District may, in any case, by giving notice in writing to Contractor, forthwith terminate the CONTRACT, fully without prejudice to Sabine Neches Navigation District's rights and remedies according to the CONTRACT and/ or applicable law, such as its right to claim compensation of any and all damage, loss, costs and consequences which Sabine Neches Navigation District may suffer. All obligations of Sabine Neches Navigation District will be terminated and no payments shall become due as and from the date that one or more of the events mentioned in this Section 57 have occurred. To the extent amounts already paid by Sabine Neches Navigation District under the terms of the CONTRACT exceed amounts on account of the foregoing sentence, such excess will immediately be due and payable by Contractor to Sabine Neches Navigation District and Contractor will pay such excess amount without delay to Sabine Neches Navigation District.

57.2 Loss of Permits. In addition to the terms of Section 57, in case no planning approval and/or building approval is granted or any granted permit, license or other governmental authorization necessary for the construction/ execution of the Project is withdrawn, revoked, cancelled or otherwise made invalid by the competent authorities for whatever reason and as a consequence thereof the construction/execution of the Project must be suspended, then Sabine Neches Navigation District is entitled to terminate the CONTRACT. If the foregoing withdrawal, revoking, cancellation or invalidity is due to act and/or omissions of Contractor or any of its Subcontractors, then Contractor shall be liable to Sabine Neches Navigation District for any and all damage, loss, costs and expenses Sabine Neches Navigation District may have suffered and/or suffer. If the foregoing withdrawal, revoking, cancellation or invalidity is due to act and/or omissions of Sabine Neches Navigation District then Sabine Neches Navigation District shall be liable to Contractor for any and all damage, loss, costs and expenses Contractor may have suffered and/or suffer

57.3 Procedure Following Termination. If the CONTRACT is so terminated in accordance with Section 57.1 or 57.2, Contractor shall immediately or upon such other date as is specified in the notice, discontinue its performance of the Project or the relevant part thereof and Sabine Neches Navigation District or its nominee shall be entitled to complete the Project or the relevant part thereof and with respect thereto Contractor shall assign to Sabine Neches Navigation District or its nominee all rights and titles relating to the Project and take all such further steps as are necessary to enable Sabine Neches Navigation District or its nominee to take over Contractor's position in the performance of the Project with the least possible disruptions, all in accordance with Sabine Neches Navigation District's instruction.

Such further steps shall include, by way of illustration and not of limitation, the following:

- enabling Sabine Neches Navigation District or its nominee to take over the Project so far completed, or the relevant part thereof, and more specifically all or the relevant part of the Sabine Neches Navigation District Materials in



Contractor's care, custody or control,

- the delivery to Sabine Neches Navigation District or its nominee of all construction plans, schedules, Drawings, Specifications and all other data prepared by Contractor or any Subcontractor in connection with the Project or the relevant part thereof and all documents, drawings and other data supplied to Contractor by or on behalf of Sabine Neches Navigation District in connection with the Project,
- give Sabine Neches Navigation District or its nominee all such cooperation as may be required by Sabine Neches Navigation District including but not limited to materials, Temporary Work, tools and other goods of Contractor or Subcontractors or available to them. Costs directly related to such cooperation all to the extent not already included in other amounts due to Contractor shall be reimbursed to Contractor at reasonable cost price.

57.4 Transfer of Title Materials. Without prejudice to Owner's ownership of portions of the Project Work, or of those materials which have been delivered to Contractor and which are at the Project Site, Sabine Neches Navigation District shall take possession in the place and conditions in which they are found and of those materials which are in transit to the Project Site or are being manufactured. Contractor shall execute any and all documents necessary to effect delivery or disposal of such materials to Sabine Neches Navigation District or at its order and Contractor shall cooperate with Sabine Neches Navigation District in arranging for that delivery or disposal.

Contractor shall further, at Sabine Neches Navigation District's request, execute and deliver to Sabine Neches Navigation District or its nominee all documents required by Sabine Neches Navigation District or its nominee and take all steps necessary to fully vest in Sabine Neches Navigation District or its nominee the rights and benefits of Contractor under existing agreements with others, including any subcontractors.

57.5 Discharge from Claims in Event of Termination. Except as provided above, in the event of termination pursuant to this Article 57, Sabine Neches Navigation District shall be released and discharged from any claim by Contractor in connection with termination of the CONTRACT or Project and Sabine Neches Navigation District shall not be held liable for damages or loss of (anticipated) profits or otherwise on account of such termination.

57.6 Termination for Sabine Neches Navigation District's Convenience. Sabine Neches Navigation District shall have the right at any time, even though Contractor is not in default, at Sabine Neches Navigation District's absolute discretion and without assigning any reason to terminate the CONTRACT in whole or in part by written notice, without any judicial intervention being necessary.

Such termination shall be effective in the manner specified in said notice.

Upon receipt of such notice Contractor shall:

- discontinue the performance of the work on the Project or specified portion thereof and thereafter Contractor shall only perform such Project Work as may be specified in the notice. In addition, Contractor shall, subject to Sabine Neches Navigation District's prior consent, do any work necessary to preserve and protect Project already in progress and to protect supplies, materials, plant, Contractor's Equipment, and other property related to the Project at the Site,
- place no further orders or enter into any new Subcontracts other than as may be required or necessary to fulfill Sabine Neches Navigation District's request in the above mentioned notice,
- promptly use its best efforts to obtain cancellation, upon terms satisfactory to Sabine Neches Navigation District, of all orders and Subcontracts related to the performance of Project Work being terminated, or assign to Sabine Neches Navigation District such orders and Subcontracts Sabine Neches Navigation District chooses to maintain,
- assist Sabine Neches Navigation District, as specifically requested in writing, in the maintenance, protection or disposal of property acquired on the Contractor's or Sabine Neches Navigation District's behalf under the CONTRACT,
- as a condition precedent to obtaining payment pursuant to Section 57 hereof, deliver and transfer to Sabine Neches Navigation District the Project Work including all such materials, equipment, supplies and other things as specified in the notice, together with all plans, Drawings, Specifications and other documents.

57.7 Payment to Contractor. In the event of termination pursuant to Section 57 (and assuming that in the case of Section 57.2 that the last sentence thereof is not applicable) and subject to Sabine Neches Navigation District's audit, Sabine Neches Navigation District shall pay Contractor in full and final settlement of all amounts due under the CONTRACT for the Project Work already performed up to termination plus a reasonable compensation to be agreed upon for costs, charges and expenses directly attributable to an orderly close-out of the Project work incurred by Contractor within 30 days following the date of termination.

57.8 Final Settlement of Accounts. If in case of termination of the CONTRACT as per the above Sections or otherwise Sabine Neches Navigation District has paid to Contractor any amounts in excess of amounts due under the CONTRACT, Contractor shall forthwith reimburse such excess amounts to Sabine Neches Navigation District.

**58. FORCE MAJEURE**

58.1 Definition of Force Majeure. “Force Majeure” as employed herein shall mean acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, famine, jihads, terrorist attack, plague, meteorites, earthquakes, volcanic eruption, civil disturbances, unusually severe weather conditions that could not reasonably have been anticipated or foreseen, floods, perils of the sea and any other cause similar to the kind herein enumerated not within the control of the party affected and which such party by exercise of due diligence is not able to overcome.

Force Majeure shall not in any event include strikes or other concerted acts of workmen occurring only among the employees of Contractor, its suppliers of goods or services or Subcontractors, lockouts, non-performance by Contractor’s suppliers of goods or services or Subcontractors for whatever cause including disturbances in their performance, later delivery caused by congestion at Contractor’s, its supplier’s and/or Subcontractor’s workshops or elsewhere, an oversold condition of the market, inefficiencies or similar occurrences.

58.2 Notice. If a party is temporarily prevented, wholly or in part by Force Majeure, from complying with its obligations under the CONTRACT and if written notice and full particulars of such Force Majeure is given to the other party within 5 (five) working days after the occurrence of the cause, then such obligation of the party affected shall be suspended as long as this prevention shall continue by reason of such Force Majeure, but the party affected shall use its best efforts to remedy such failure of fulfillment with all reasonable dispatch and it shall continue to keep the other party fully advised of the progress being made in such efforts.

58.3 Procedures. Any delay or failure to perform by a party as aforesaid by reason of Force Majeure shall not give rise to any claim for damages by the other party if and to the extent that such delay or failure is caused by Force Majeure and provided the notice as mentioned above is given as required therein, but Sabine Neches Navigation District and Contractor shall consult together with a view to agree on extension of the Completion Date and on suitable operational arrangements, if any, to be made during any Force Majeure occurrence.

If the delay or failure caused by Force Majeure lasts more than thirty (30) days, the Contractor and Sabine Neches Navigation District shall at the request of either convene and discuss the then existing situation and if the non-affected party based on appraisal of available facts then concludes that the extent of the delay or failure will in total exceed 60 (sixty) days, then the non-affected party shall have the right to terminate the CONTRACT by written notice to the other party, in which case the relevant provisions of Sections 57.3 and 57.4 shall apply.

In the event of any dispute, the party claiming to be affected by Force Majeure shall bear the burden of proof that it is so affected.

## **59. APPLICABLE LAW AND VENUE**

59.1 Law. The CONTRACT shall be exclusively governed by and interpreted in accordance with the laws of the State of Texas. Venue for any action caused by or under this CONTRACT will be in Jefferson County, Texas.

## **60. WAIVER**

60.1 None of the conditions of the CONTRACT shall be considered waived by Sabine Neches Navigation District or Contractor unless such waiver is given in writing to the other party. Such waiver shall apply only to the specific terms, items and times named in the waiver and shall not be broadly interpreted to imply waiver of any obligation not specifically and fully described in the waiver. No such waiver shall be waiver of any part of future default, breach or modification of any of the conditions of the CONTRACT unless expressly stipulated in such waiver.

60.2 No approval of any type including inspection approvals or releases shall constitute a waiver unless specifically stipulated therein.

**AS A POLITICAL SUBDIVISION OF THE STATE OF TEXAS, THE SABINE NECHES NAVIGATION DISTRICT NOTHING CONTAINED HEREIN SHALL BE CONSTRUED AS A WAIVER OF OWNER'S GOVERNMENTAL IMMUNITY.**

## **61.1 STATE AUDITOR CLAUSE**

By executing this CONTRACT, the CONTRACTOR accepts the authority of the Texas under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received pursuant to this CONTRACT. The CONTRACTOR shall comply with and cooperate in any such investigation or audit. The CONTRACTOR agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The CONTRACTOR also agrees to include a provision in any subcontract related to this CONTRACT that requires the CONTRACTOR to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received pursuant to the subcontract.

## **61.2 FINANCIAL RECORDS**

The CONTRACTOR and its Contracted parties shall maintain satisfactory financial accounting documents and records, including copies of invoices and receipts, and shall make them available for examination and audit by a State Auditor. Accounting by the CONTRACTOR (S) and its Contracted parties shall be in a manner consistent with generally accepted accounting principles.

## **61.3 NO DEBT AGAINST THE STATE**

This CONTRACT and Agreement shall not be construed as creating any debt by or on behalf of the State of Texas and all obligations of the State of Texas and are subject to the availability of funds.

## V. SPECIAL CONDITIONS

### 1. TAXES

The OWNER is exempt from State Sales and Use Taxes on materials and equipment incorporated in the Project. Therefore, to enable the CONTRACTOR to obtain a sales tax exemption, the bid must be split into labor and material components as specified on the Bid Form, **Exhibit B** and on the Separation of Materials form, **Exhibit N**. The OWNER will provide the CONTRACTOR with the necessary documentation enabling him to obtain a sales tax exemption on materials and equipment incorporated into the Project.

### 2. NIGHTS, WEEKENDS, AND HOLIDAY WORK

In order to meet the construction schedule, the CONTRACTOR may work on nights, weekends, and holidays. The CONTRACTOR must notify the OWNER in advance of the work schedule to allow the OWNER to have an inspector available, as the OWNER may deem necessary, during any and every part of the construction work.

### 3. CONTRACT COORDINATION

The OWNER may have other work ongoing at the same time as this Project. The CONTRACTOR shall coordinate his construction activities so as not to impede unnecessarily any work being performed by other CONTRACTORS or by those conducting OWNER's operations.

### 4. SOIL CONDITIONS

The CONTRACTOR must be aware of subsurface conditions that will be encountered while executing this Project. It will be the Contractor's responsibility to be aware of the existing site conditions, therefore, the Contractor may obtain soil borings to verify the information that may or may not be provided herein.

### 5. CONSTRUCTION SCHEDULE

**Contractor is advised that it is the intention of the Owner to complete the Project by May 30, 2021.**

Contractor must furnish Owner with a Project schedule reflecting the bid items included in the Bid Form. A construction bar chart schedule depicting the Project duration must be submitted with each bid. The subject schedule must address that time frame between Notice to Proceed and Project completion.

Minimum specific tasks for the project are as follows:

- Mobilization/Demobilization
- Clearing and Stripping/Vegetation Removal
- Levee Construction w/fabric

The successful CONTRACTOR shall, five (5) days prior to date of commencement of the Project, prepare and submit to the ENGINEER/OWNER for approval, a more detailed schedule

showing the order in which he proposes to carry on the Project, the dates on which he will start the Project, and the contemplated dates of completion of the same. In addition, weekly scheduling with the ENGINEER, and the OWNER will be required to minimize hardships.

Liquidated damages apply to this Project completion schedule and are described in Paragraph 9 of the Special Conditions.

#### 6. OWNER FURNISHED MATERIAL AND SERVICES

The Owner shall furnish no materials or services for this Project. All materials, utilities and equipment necessary for the completion of the Project shall be the responsibility of the Contractor.

#### 7. CONTRACTOR FURNISHED MATERIAL AND SERVICES

All material, equipment, and labor required to complete the Project as specified is to be supplied by the CONTRACTOR.

#### 8. PREVAILING WAGE RATES

The OWNER, as a Public Body, requires that all CONTRACTORS and SUBCONTRACTORS, by law, pay the Prevailing Wage Rates as specified in **Exhibit H** of these contract documents. The CONTRACTOR is to comply with the laws governing the Prevailing Wage Rates as detailed in Chapter 2258, subtitled "Prevailing Wage Rates", of Title 10 in the Texas Government Code.

As described in the Texas Government Code, the CONTRACTOR shall pay a \$60.00 per day per worker penalty for non-compliance with the Prevailing Wage Rates Laws. In addition, the CONTRACTOR may face Criminal Offense Charges for non-compliance with the Prevailing Wage Rates Laws. Enforcement of the Prevailing Wage Rates Laws shall be in accordance with the provisions set forth in Chapter 2258, Subchapter C, of Title 10 in the Texas Government Code.

The CONTRACTOR and their SUBCONTRACTORS shall be required to keep a record certifying the following:

- The name of each worker employed on the Project,
- Each worker's category (occupation) according to the Prevailing Wage Rates List,
- Each worker's rate of pay associated with their category of the Prevailing Wage Rates List
- The actual per diem wages paid to each worker.

## 9. LIQUIDATED DAMAGES

Should the CONTRACTOR fail to execute the Project within the period of time stipulated by the Contract Agreement, the CONTRACTOR shall pay to the Owner the daily charge. This charge will be as follows:

Failure to complete the work of the Contract Agreement prior to the Project completion date of May 30, 2021 will result in a \$500/day charge. Liquidated damages will be deducted from the retainage due the Contractor at the end of the Project. Rain days will be allowed. The Contractor shall submit request for rain days each month with the monthly invoices for approval.

## 10. DISPOSAL OF EXCESS MATERIAL

CONTRACTOR shall be responsible for removal and disposal of all excess soil, organic material and construction debris. Excess soil and organic material shall be disposed of onsite as directed by SNND. Construction material shall be disposed of offsite. Material shall be disposed of in accordance with all local, state and federal laws and regulations. All handling and disposal fees shall be included in the CONTRACTOR'S bid price.

## 11. OWNERS ACCESS TO THE SITE

The OWNER's employees and representatives shall have access to the Project work site at all times.

## 12. SURVEYING AND LAYOUT

Surveying and layout work for this Project shall be the responsibility of the Contractor. All dimensions shown on the Contract Drawings, including distances, coordinates, elevations, and angles, shall be field verified by the Contractor prior to commencing with the applicable work.

## 13. CONDITIONS ON SITE

**Contractors are to familiarize themselves with the location and conditions under which the work will be performed or any conditions that will affect the Project. No additional allowance will be granted due to lack of such knowledge. The Project is located in the vicinity of existing gas and oil pipelines, telephone, sewer, water, and /or electrical utility lines. The Contractor shall identify existing pipelines and utilities prior to beginning work and shall handle his work in a manner so as not to damage the existing pipelines and utilities. He shall repair or pay for any repairs for damage done to existing pipelines and utilities.**

## 14. EXCAVATIONS

The Contractor is solely responsible for designing and constructing stable, temporary excavations and shall shore, slope, or bench the sides of the excavations as required to maintain stability of both the excavation sides and bottom. The Contractor's "responsible person", as defined in 29 CFR Part 1926, should evaluate the soil exposed in the excavations as part of the

SABINE NECHES NAVIGATION DISTRICT  
PLACEMENT AREA 13 LEVEE CONSTRUCTION PROJECT

Contractor's safety procedures. In no case should slope height, slope inclination, or excavation depth, including utility trench excavation depth, exceed those specified in local, state, and federal safety regulations.

The Owner and the Owner's Engineers do not assume responsibility for construction site safety or the Contractor's or other parties' compliance with local, state, and federal safety or other regulations.

15. ACCESS TO THE SITE

Lay down area at the site is limited. If additional lay down area is needed it must be requested and then approved by the Navigation District.

Contractor shall ensure that all work is performed in accordance with all state and federal environmental rules and regulations.

17. STORM CONDITIONS

The contractor is responsible for removing or securing all equipment on the Project site in the event of an approaching tropical storm. The contractor is also responsible for removing and/or safely securing all Project materials in the event of an approaching tropical storm.