

**Bidding Requirements, Contract Forms & Conditions of the Contract**  
**REQUEST FOR BIDS**

**Request for Bids  
for  
Construction Services  
for the  
Drainage Improvements Project at the  
Karnes County Jail**

**Karnes City, Karnes County, Texas**

**May 2, 2018**

**Bidding Requirements, Contract Forms & Conditions of the Contract**  
**REQUEST FOR BIDS**

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**I. BACKGROUND**

**1. General Description**

Karnes County invites the submittal of responses to this Request for Bids (RFB) from qualified firms interested in providing construction services in connection with the construction of drainage improvements at the Karnes County Jail, located at 500 E. Wall Street Karnes City, Texas 78118.

The Project has been designed by Intrepid Surveying & Engineering as the primary civil engineering consultant and designer. The Project is anticipated to include some or all of the following items within its scope: construction of a capped culvert drainage system to collect upstream flows and tie-in to existing downstream. Improvements, as well as all other appurtenances necessary for the complete Project.

Responses are solicited for this service in accordance with the terms, conditions, and instructions set forth in the RFB guidelines.

**II. CONSTRUCTION SERVICES**

The construction services requested of Bidders is generally described as construction of capped culvert drainage system. Included with this RFB is a complete set of construction drawings and technical specifications.

**1. Purposes of RFB**

Karnes County issues this RFB seeking competitive sealed Bids in accordance with Chapter 2269 of the Texas Government Code for the construction of the Work as described above and depicted on the construction drawings attached to this RFB.

Karnes County seeks the lowest responsible bidder, as that term is used in section 2269.101. In accordance with section 2269.055, Karnes will determine the lowest responsible bidder based on the specific criteria to consider provided in that section. Those criteria are as follows:

- (1) the price;
- (2) the offeror's experience and reputation;
- (3) the quality of the offeror's goods or services;
- (4) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;
- (5) the offeror's safety record;
- (6) the offeror's proposed personnel;

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- (7) whether the offeror's financial capability is appropriate to the size and scope of the project; and
- (8) any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

**2. Location**

The Project site is located at approximately 500 E. Wall Street Karnes City, Texas 78118.

**3. Project Duration**

Karnes County has established a target commencement date for construction activities as Monday, June 4th, 2018. The projected completion date is estimated to be Sixty 60 calendar days. Karnes County reserves the right to modify the commencement date, subject to Owner and Contractor availability, phase the construction of the Project, or modify the schedule as needed and determined by the Karnes County Commissioners Court or staff due to modifications in scope.

**4. Project Budget**

The proposed budget for construction costs for this Project is \$175,000, inclusive of contingency.

**2. Bid Opening**

Karnes County will be accepting sealed Bids until 9:00AM central standard time on Thursday, May 17th, 2018, at which time they will be opened publicly and the name of the offeror and the monetary component of the Bids shall be read aloud. Any Bid received after bidding time will be returned unopened. Receipt of response does not bind Karnes County to any contract for said services, nor does it give any guarantee that a contract for the Project will be awarded.

Bid forms, contract documents, construction plans and specifications can be obtained by contacting the Karnes County Facilities Maintenance Manager, Rene Montalvo at [rmontalvo@co.karnes.tx.us](mailto:rmontalvo@co.karnes.tx.us) or Intrepid Surveying & Engineering Corp. Attn: Russell Jaskinia, PE, CFM at [russellj@intrepidtx.com](mailto:russellj@intrepidtx.com). A non-refundable reproduction fee is required in the amount of Twenty-Five Dollars (\$25.00) for a hard copy set and Ten Dollars (\$10.00) for a USB Drive containing an electronic set.

Offerors shall return **1 clearly marked original and 2 copies** of their Bids to County Judge's Office, 210 W. Calvert, Suite #160, Karnes City, Texas 78118, in an envelope or package no smaller than 8-1/2" X 11" and clearly marked in the lower left hand corner:

**SEALED BID**

**Submitting Company Name:** \_\_\_\_\_

**Drainage Improvements Project  
at the Karnes County Courthouse Jail**

Karnes County, Texas

**Date:** \_\_\_\_\_

**3. Pre-bid**

A pre-bid conference for all interested parties will be held onsite at 500 E. Wall St., Karnes City, Texas, at 10am on Thursday, May 10<sup>th</sup>, 2018. It is highly recommended that all parties interested in submitting a bid for this work be present.

**4. Bid Bond**

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**Each Bid must be accompanied by a certified check, cashier's check, or an approved Bid Bond** in the amount of **5%** of the Bid cost, payable to Karnes County without recourse, as a guarantee the Bidder will enter into a contract and execute 100% performance and payment bonds on the forms provided, within ten (10) days after the contract has been awarded.

**5. Rights Reserved**

Bids shall remain open and may be held by Karnes County for Ninety (90) days for full evaluation and ranking of offerors. Based on its sole discretion, Karnes County reserves the right to determine the propriety of any bid and may disqualify any bidder based on an incomplete, inaccurate, or noncompliant bid. The Karnes County Commissioners Court reserves the right to reject any or all of the Bids, to waive formalities, and to make an award to an Offeror in the order of ranking as outlined in this RFB and that the Court determines will be in the best interest of the public. Bidders will be notified in writing of any determinations made by Karnes County pursuant to this section.

**6. Disclosure**

The State of Texas Local Government Code (Chapter 176) requires that all vendors seeking to do business with Karnes County file a disclosure questionnaire identifying any business relationship they have with a Karnes County Commissioner or County Judge. The disclosure questionnaire **must be submitted with your Bid.**

**7. Certificate of Interested Parties**

State of Texas Government Code (Chapter 2252) states that Karnes County may not enter into a contract with a business entity unless and until the business entity has submitted a completed Conflict of Interest Questionnaire (hereafter referred to as "Form 1295") to Karnes County for filing with the Texas Ethics Commission (hereafter referred to as "TEC"). Instructions for completing this form are included in this project manual and **must be submitted with your Bid.**

**8. Questions and Addenda**

Questions regarding this RFB or the services requested must be sent to the Rene Montalvo, [rmontalvo@co.karnes.tx.us](mailto:rmontalvo@co.karnes.tx.us) or Russell Jaskinia, PE, CFM, [russellj@intrepidtx.com](mailto:russellj@intrepidtx.com), prior to Bid Opening. Responses to all questions submitted will be communicated to each prospective Bidder if any modifications or additions are made as a result of questions submitted. Written addendum of any such change will be in writing to all known potential Bidders. Only written change notices issued through the County and signed by the Facilities Maintenance Manager or Design Engineer are valid. Any and all other changes are unauthorized and will be considered invalid.

**III. OBJECTIVES**

Owner proposes to retain a highly qualified, capable firm to act as its general contractor for the construction of the Project. Firms who participate in this RFB process are sometimes referred to as "Bidders", "Respondents" and "Offerors". Owner will give prime consideration to the Offerors with significant, current experience in the management and construction of similar projects. Experience in construction of similar types of projects is essential.

**IV. SCOPE OF WORK**

Owner anticipates the scope of work to consist of the following responsibilities:

All material procurement and purchasing and construction, installation, testing, and associated services as described in the Construction drawings and specifications attached hereto and all other work as may be evidenced by the design intent of the documents.

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The selected Offeror will be also responsible for: obtaining all applicable permits and inspections; providing all necessary performance and payment bonds and insurance requirements; and providing the Owner with all manufacturers' warranties and all operations and maintenance (O & M) manuals for all equipment installed.

**V. SELECTION PROCESS**

Respondents should prepare a sealed Bid responsive to all information requested in this RFB.

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days of Owner's request written evidence, such as financial data, previous experience, present commitments and other such data as may be called for below. Each Bid must contain evidence of Bidder's qualification to do business in the state of Texas or covenant to obtain such qualification prior to award of the contract.

Karnes County will select the offeror that submits the Bid that offers the best value for the Owner based on the criteria in this request and its ranking evaluation. The statement of qualifications received will be part of the selection process utilized by Owner. Owner reserves the right to and may contact Offerors with questions or clarifications relating to that Offeror's response to this RFB.

The bid set of Contract Documents, including the forms for the Agreement between Owner and Contractor, Bid Form, the General Conditions of the Contract, the Insurance Rider for Contractor Coverage, the requisite bond forms, and the Drawings and Specifications are included with this RFB for Offeror evaluation prior to submission of a Bid.

Each Bid, completed and signed by person(s) authorized to bind individual, partnership, firm, corporation, or any other legal entity, shall include the following in one envelope furnished by BIDDER:

- One copy of Bid Form completed and signed.
- Acknowledgment of receipt of Addenda issued in spaces provided in Bid form.
- Required bid guaranty.
- Copy of Articles of Incorporation, Partnership Agreements and resolution or board minutes empowering signatory to bind bidder, attested by an officer of bidder.
- One copy of Insurance, completed and signed.
- Other Required information indicated in Drawings or Contract Documents.

Bid shall include all specified items in this section and be placed in envelopes furnished by BIDDER, sealed and clearly identified on outside as a Bid to OWNER, with bidder's name and address, and project name. Failure to submit Bid in these envelopes may subject bidder to disqualification. Bid must be delivered in person, by United States Mail, or by private courier service.

When sent by in person, by United States Mail, or by private courier service., sealed Bid (marked as indicated above) shall be enclosed in an additional envelope clearly identified on outside as a

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Bid to Owner with bidder's name and address, Project name, and Bid date and time. It is the sole responsibility of the Bidder to ensure timely delivery of Bid. Owner will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service chosen by the Bidder.

**VI. AWARD OF CONTRACT**

1. OWNER reserves the right to reject any and all Bids, to waive any and all formalities not involving price, time, or changes in the Work with the Successful Bidder, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Bids. Also, OWNER reserves the right to reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by OWNER. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
2. In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternatives, and other data, as may be requested in the Bid Form or prior to the Notice of Award.
3. If the Contract is to be awarded, it will be awarded to the lowest Bidder whose evaluation by OWNER indicates to OWNER that the award will be in the best interest of the Project. The Total Base Bid will be the basis of evaluation.
4. If the contract is to be awarded, OWNER will give the Successful Bidder a Notice of Award within ninety (90) days after the day of the Bid opening.
5. OWNER reserves the right to increase the value of the contract by adding alternatives described in the Proposal.

**VII. ADDITIONAL INSTRUCTIONS, NOTIFICATIONS, AND INFORMATION**

**1. All Information True**

Respondent represents and warrants to Owner that all information provided in the response shall be true, correct and complete. Respondents who provide false, misleading, or incomplete information, whether intentional or not, in any of the documents presented to Owner for consideration in the selection process shall be excluded.

**2. Inquires**

Do not contact Owner during the selection process to make inquiries about the progress of this selection process. Such contact may result in disqualification. Respondents will be contacted when it is appropriate to do so.

**3. Cost of Responses**

Owner will not be responsible for the costs incurred by anyone in the submittal of responses.

**4. No Obligation**

Owner reserves the sole right to (1) evaluate the responses submitted; (2) waive any irregularities therein; (3) select candidates for the submittal of more detailed or alternate Bids (4) accept any submittal or portion of submittal; (5) reject any or all Respondents submitting responses, should it be deemed in Owner's best interest, or (6) cancel the entire process.

**5. Statement of Statutory Compliance**

**Pursuant to section 2270.002 of the Texas Government Code, all Offerors submitting a Bid in response to this RFB must include with the Bid a verified statement that the Offeror does**

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not boycott Israel and will not boycott Israel during the term of the Project if the contract is awarded to the Offeror. Failure to comply with this requirement is grounds for disqualification; however, Karnes County reserves the right to contact any Offeror who fails to comply initially to correct the omission or to confirm the Offeror's policy.

**END OF DOCUMENT**



**KARNES COUNTY JAIL  
DRAINAGE IMPROVEMENTS  
KARNES CITY, KARNES COUNTY, TX**

DATE: 5/1/2018  
PROJECT: 17-0209 Karnes County Jail Drainage  
FILE TYPE: QUANTITIES FOR BID PACKAGE

ITEM NO.	COSA ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT COST	COST
<b>Drainage Improvements</b>						
1.	100.1	Mobilization	1	LS		
2.	102.1	Demolition, Remove Debris, Remove Existing Conc. Strc.	1	LS		
3.	104.1 & 106.1	Excavation (Road and Channel)	100	CY		
4.	107.1	Embankment (Channel Backfill)	700	CY		
5.	200.1	8" Flexible Base	1,500	SY		
6.	403.2	5'x5' 4-way Inlets (Junction Boxes)	5	EA		
7.	403.1	4'x4' 4-way Inlets (Junction Box)	1	EA		
8.	505.1	6" Concrete Rip-Rap (DropDowns, Flumes & Cast-In-Place JB)	1,875	SF		
9.	404.1	48" CMP (UltraFLO)	508	LF		
10.	404.1	30" CMP (UltraFLO)	22	LF		
11.		FRENCH DRAIN(4" PERFORATED PIPE, 1"-1.5"WASHED GRAVEL, 2'X2' TRENCH LINED FABRIC	194	LF		
12.	530.1	Traffic Control(Barricades, Signs, Traffic Handling)	1	LS		
13.	550.1	Trench Excavation Safety Protection	550	LF		
14.	554.1	TPDES (Erosion Control and Seeding)	1	LS		
<b>Drainage Improvements Subtotal:</b>						
<b>Estimated Drainage Improvements Total:</b>						
<b>Alternate Bid Item No. 1</b>						
9.	401.1	48" RCP	508	LF		
10.	401.1	30" RCP	22	LF		
<b>Alternate Bid Items Subtotal:</b>						
<b>Alternate Bid Items Total:</b>						

**Notes:**

- a) Use City Of San Antonio(COSA) / TxDOT Specifications and Details
- b) Concrete Riprap Cost should include toedowns (Typ.)
- c) Contractor to list their assumptions if Bid varies from Bid Package Quantities
- d) All pipe backfill shall be flowable fill as per specs.

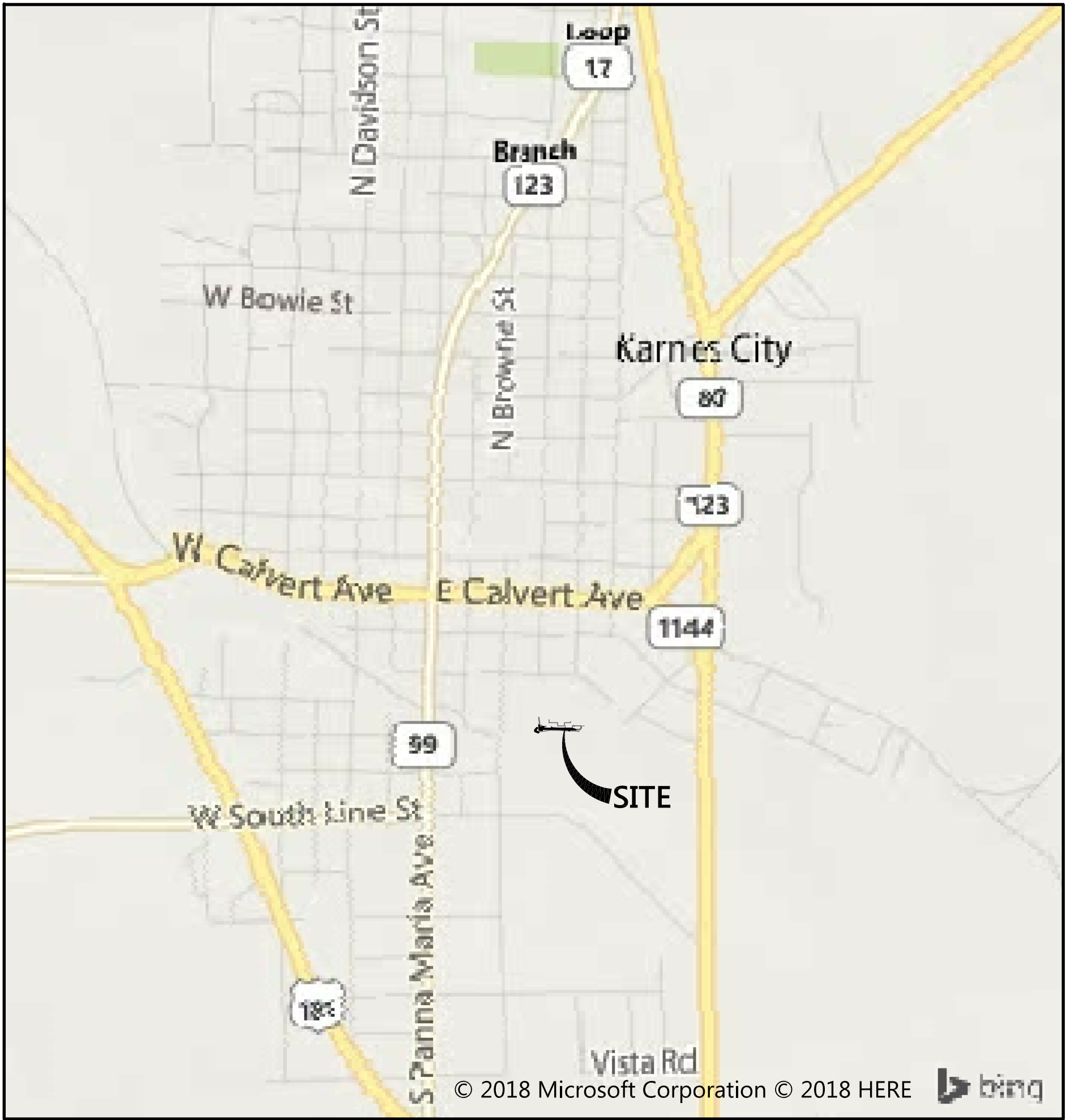
Disclaimer: This estimate is provided as a probable construction cost, the client understands that Intrepid has no control over the cost or availability of labor, equipment or materials, or over market conditions or the contractor's method of pricing, and that Intrepid's estimates of probable construction cost are made on the basis of Intrepid's professional judgement and experience. Intrepid makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from Intrepid's estimate of probable construction cost.



KARNES COUNTY JAIL  
DRAINAGE IMPROVEMENTS  
CIVIL CONSTRUCTION PLANS

INDEX

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DRAIN DETAILS	C3.1



LOCATION MAP

SCALE: 1" = 1000'

ADDRESS/LOCATION:  
KARNES COUNTY JAIL  
KARNES CITY, TEXAS  
KARNES COUNTY

PROPERTY OWNER :  
KARNES COUNTY  
KARNES CITY, TEXAS 78118  
(830) 780-3938 (COUNTY CLERK)

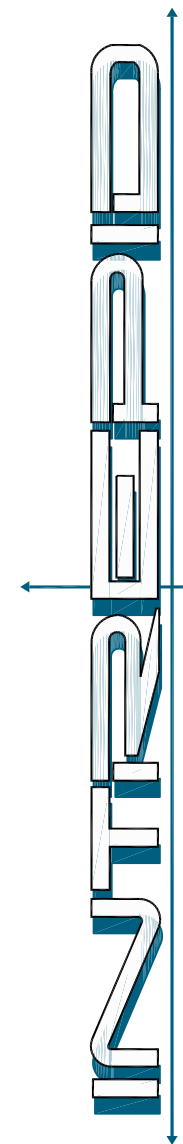
GENERAL NOTES

1. CONTRACTOR SHALL COORDINATE CONSTRUCTION WITH THE CITY OF KARNES CITY STAFF.
2. CONTRACTOR TO FIELD VERIFY ALL VERTICAL AND HORIZONTAL LOCATIONS OF EXISTING UTILITY LINES PRIOR TO CONSTRUCTION OF PROPOSED IMPROVEMENTS.
3. THE CONTRACTOR SHALL CONTACT THE ENGINEER IF DISCREPANCIES SHOULD ARISE BETWEEN RECORD INFORMATION IN THE FIELD.
4. ALL TRAFFIC CONTROLS SHALL CONFIRM WITH THE LATEST EDITION OF THE TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD). CONTRACTOR SHALL NOTIFY THE CITY OF KARNES CITY AND / OR TXDOT AT LEAST 72 HOURS PRIOR TO PLACEMENT OF ANY TRAFFIC CONTROL DEVICES WITH THEIR RIGHT-OF-WAY.
5. CONTRACTOR SHALL REPAIR ANY DISTURBED ROADWAY AND DRIVEWAYS WITH EQUAL OR BETTER MATERIAL PER DETAILS AND SPECIFICATIONS.
6. ALL CONSTRUCTION ACTIVITIES WITHIN TXDOT'S RIGHT-OF-WAY MUST BE CONSTRUCTED IN ACCORDANCE WITH TXDOT SPECIFICATIONS.
7. CONTRACTOR TO RE-VEGETATE AND WATER ALL DISTURBED AREAS PER SPECIFICATION.

SEQUENCE OF CONSTRUCTION

1. COORDINATE ALL START-UP WORK WITH CITY/TXDOT IF APPLICABLE IN THEIR RIGHT-OF-WAY.
2. INSTALL AND MAINTAIN TEMPORARY EROSION AND SEDIMENTATION CONTROLS PER APPROVED PLANS.
3. PRIOR TO BEGINNING CONSTRUCTION, THE CONTRACTOR OR HIS REPRESENTATIVE SHALL CONVENE A PRE-CONSTRUCTION MEETING BETWEEN TXDOT, DESIGN ENGINEER, CONTRACTOR/SUBCONTRACTOR(S), ALL UTILITY SERVICE PROVIDERS AND ANY OTHER AFFECTED PARTIES. ALL PARTIES SHALL BE NOTIFIED AT LEAST 3 BUSINESS DAYS PRIOR TO THE PROPOSED MEETING TIME.
4. BEGIN ANY NECESSARY DEMOLITION, CONTRACTOR TO COORDINATE ANY DEMOLITION ACTIVITIES WITH THE CITY OF KARNES CITY STAFF.
5. CONTRACTOR TO CONTACT ENGINEER FOR INSPECTION BEFORE ANY CONCRETE POURING OR BACKFILLING OF PIPING. MINIMUM 48HOURS NOTIFICATION.
6. INSTALL DRAINAGE IMPROVEMENTS AND BACKFILL, COMPACTION TESTING, CONTRACTOR TO COORDINATE WITH THE CITY OF KARNES CITY STAFF FOR CONNECTIONS TO EXISTING UTILITIES AND PROVIDING CONTINUOUS SERVICE TO HOME OWNERS AND BUSINESSES(IF NECESSARY).
7. REPAIR PAVEMENT, HYDROMULCH OR SOD ALL DISTURBED AREAS AND CLEAN UP SITE.
8. DISPOSE OF ALL CONSTRUCTION DEBRIS AND TRASH.
9. UPON COMPLETION OF PROJECT, CONTRACTOR SHALL SCHEDULE FINAL INSPECTION WHEN PROJECT IS STABILIZED AND VEGETATION ESTABLISHED WITH THE ENGINEER PRIOR TO REMOVAL OF EROSION CONTROLS.
10. FINAL CLEANING OR EROSION AND SEDIMENTATION CONTROLS. THIS SHALL OCCUR PRIOR TO FINAL PAYMENT AND OR CONCURRENCE AND ACCEPTANCE.
11. REMOVE TEMPORARY EROSION AND SEDIMENTATION CONTROLS. RESTORE ANY AREAS DISTURBED DURING REMOVAL OF EROSION AND SEDIMENTATION CONTROLS.

REVISIONS:

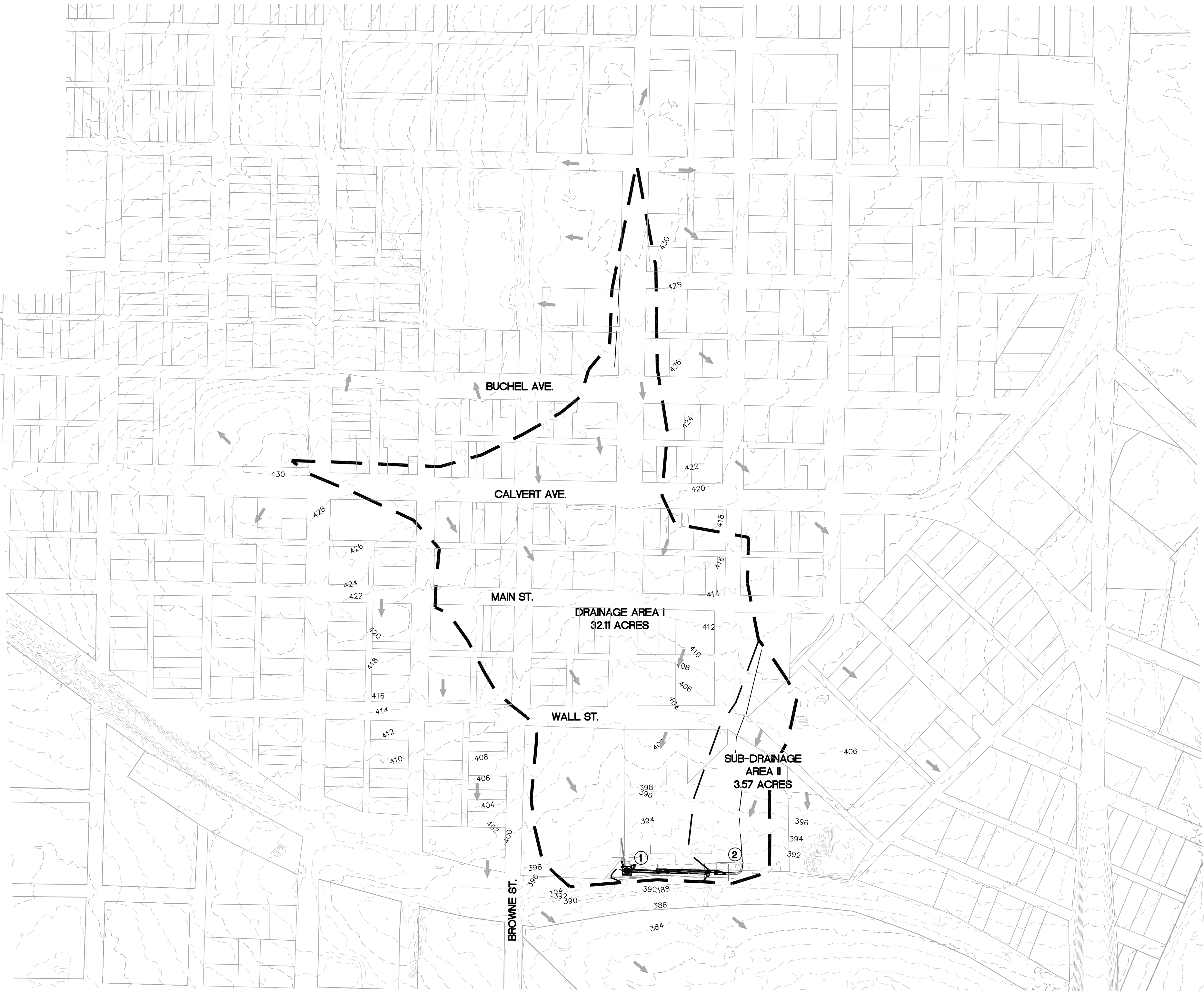


P.O. BOX 519  
1004 C STREET  
FLORESVILLE, TX 78114  
D. 830.393.8833 • F. 830.393.3888  
WWW.INTREPIDTX.COM  
TBPLS #10199936 • TBPE #16550

TITLE SHEET  
FOR  
KARNES COUNTY JAIL  
DRAINAGE IMPROVEMENT  
KARNES CITY, TEXAS  
KARNES COUNTY

JOB NO.:	17-0209
DATE:	JANUARY 2018
CHECKED:	RJ
DESIGNED:	MK
SHEET:	C0.0

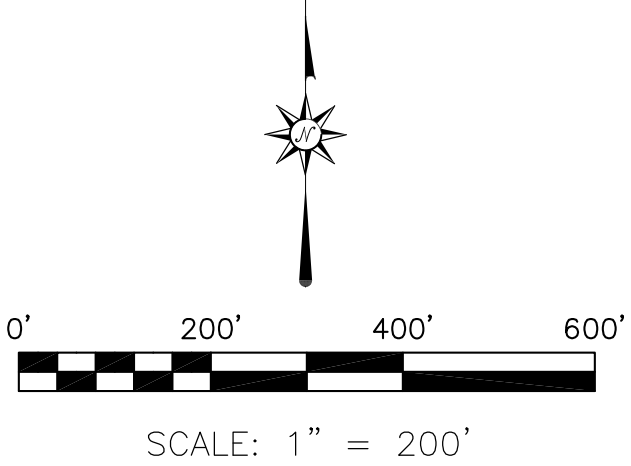




- GENERAL NOTES:
- OVERLAND FLOW CALCULATIONS WERE DERIVED FROM THE SEELEY CHART.
  - CONTOURS WERE CREATED FROM AERIAL LIDAR DATA RECEIVED FROM SAN ANTONIO RIVER AUTHORITY AND ARE FOR GRAPHICAL USE ONLY.
  - INTREPID USED THE RATIONAL METHOD FOR DRAINAGE AREA COMPUTATION OF AREAS LESS THAN 200 ACRES.
  - NO 100 YEAR FEMA FLOODPLAIN IS ADJACENT TO THE SITE.

LEGEND:	
	BOUNDARY LINE
	ADJOINER LINE
	SURVEY LINE
	BURIED UTILITY LINE
	OVERHEAD UTILITY LINE
	FENCE
	5' MAJOR CONTOUR LINE
	1' MINOR CONTOUR LINE
	Tc FLOWPATH
	ROAD CENTERLINE (APPROX.)
	WATERSHED BOUNDARY
	CALCULATION POINT
	FLOW ARROW AND % SLOPE
	FLOW ARROW - EXISTING
	FLOW ARROW - PROPOSED

OVERALL DRAINAGE SUMMARY TABLE																
CALC. POINT	AREA ID	DESCRIPTION	AREA	OVERLAND FLOW		SHALLOW CONCENTRATED			CHANNEL FLOW			Tc	C value	INTENSITY	STORM	Q value
			ACRES	LENGTH(FT.)	TIME(MIN.)	LENGTH(FT.)	VELOCITY(FT/S)	TIME(MIN.)	LENGTH(FT.)	VELOCITY(FT/S)	TIME(MIN.)	TOTAL TIME (MIN.)				
1	I	Karnes City Drainage Overall Area	32.11	300	17.0	1635	3.6	7.6	265	6	0.7	25.3	0.8	5.2	10 Year	134
														6.1	25 Year	157
														7.6	100 Year	195
2	II	Karnes City Drainage East Sub-Area	3.57	215	13.0	480	3.6	2.2	110	6	0.3	15.5	0.8	6.8	10 Year	19
														8.0	25 Year	23
														9.9	100 Year	28



**INTREPID**  
SURVEYING & ENGINEERING  
P.O. Box 519 • 1004 C STREET  
FLORESVILLE, TX 78114  
O. 830.393.8833 • F. 830.393.3888  
WWW.INTREPIDTX.COM  
TBPLS #10199936 • TBPE #16550

MASTER DRAINAGE PLAN  
FOR  
KARNES COUNTY JAIL  
DRAINAGE IMPROVEMENT  
KARNES CITY, TEXAS  
KARNES COUNTY

JOB NO.: 17-0209

DATE: JANUARY 2018

CHECKED: RJ

DESIGNED: MK

SHEET: C1.0



AS OF OCT 1, 1998, IT IS TEXAS STATE LAW THAT YOU CONTACT A ONE-CALL SYSTEM BEFORE EXCAVATING

A FEDERAL LAW NOW IN EFFECT ALSO STATES THAT ANY PERSON WHO ENGAGES IN EXCAVATION ACTIVITIES WITHOUT FIRST USING AN AVAILABLE ONE-CALL NOTIFICATION SYSTEM TO DETERMINE LOCATIONS OF UNDERGROUND FACILITIES: OR WITHOUT HEEDING LOCATION INFORMATION OR MARKINGS AND SUBSEQUENTLY DAMAGES AN UNDERGROUND FACILITY SHALL BE SUBJECT TO A FINE, IMPRISONMENT, OR BOTH. THE LAW ALSO STATES THAT OSHA MAY BE NOTIFIED OF ANY ACCIDENT CAUSED BY AN EXCAVATOR.

1. THE EXISTING UTILITY LOCATIONS SHOWN ARE APPROXIMATE ONLY. SOME OF THE LOCATIONS WERE DETERMINED FROM MAPS PROVIDED BY THE RESPECTIVE UTILITY OWNER AND ARE NOT GUARANTEED. UTILITIES NOT SHOWN ON THIS DRAWING MAY EXIST. THE CONTRACTOR SHALL CONTACT THE RESPECTIVE UTILITY OWNER FOR FIELD VERIFICATION AND IS RESPONSIBLE FOR ANY DAMAGES TO AND FOR MAINTENANCE AND PROTECTIONS OF ALL EXISTING UTILITIES. CONTRACTOR SHALL NOTIFY AND COORDINATE WITH EACH UTILITY OWNER 72 HOURS PRIOR TO ANY EXCAVATION. CONTRACTOR SHALL CALL A UTILITY LOCATOR FOR GENERAL UTILITY LOCATIONS.

CONTRACTOR AND/OR CONTRACTORS INDEPENDENTLY RETAINED EMPLOYEE OR STRUCTURAL DESIGN/GEOTECHNICAL/SAFETY/EQUIPMENT CONSULTANT, IF ANY, SHALL REVIEW THESE PLANS AND AVAILABLE GEOTECHNICAL INFORMATION AND THE ANTICIPATED INSTALLATION SITE(S) WITHIN THE PROJECT WORK AREA IN ORDER TO IMPLEMENT CONTRACTOR'S TRENCH EXCAVATION SAFETY PROTECTION SYSTEMS, PROGRAMS AND/OR PROCEDURES. THE CONTRACTOR'S IMPLEMENTATION OF THE SYSTEMS, PROGRAMS AND/OR PROCEDURES SHALL PROVIDE FOR PROTECTING TRENCH WORKERS FROM COLLAPSE AND PROVIDE PROTECTIVE MEASURES FOR TRENCH EXCAVATIONS. SPECIFICALLY, CONTRACTOR AND/OR CONTRACTORS INDEPENDENTLY RETAINED EMPLOYEE OR SAFETY CONSULTANT SHALL IMPLEMENT A TRENCH SAFETY PROGRAM IN ACCORDANCE WITH OSHA STANDARDS GOVERNING THE PRESENCE AND ACTIVITIES OF INDIVIDUALS WORKING IN AND AROUND TRENCH EXCAVATION.

1. CONTRACTOR MUST OBTAIN ALL APPLICABLE PERMITS FOR CONSTRUCTION IN RAILROAD ROW BEFORE BEGINNING WORK. CONTRACTOR WILL COORDINATE WITH CITY, COUNTY AND RAILROAD AGENCIES FOR APPROVAL OF WORK. COMMENCEMENT OF WORK SHALL BE BEFORE PROCEEDING TO THE NEXT STEP.

2. IT IS THE CONTRACTOR'S RESPONSIBILITY TO SEE THAT ALL SIGNS AND BARRICADES ARE PROPERLY INSTALLED AND MAINTAINED. ALL SIGNS AND BARRICADES SHALL BE IN ACCORDANCE WITH THE TEXAS MANUAL OF STYLE, THE TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES, THE CITY OF KARNES CITY AND TxDOT BARRICADE AND CONSTRUCTION STANDARDS. CONSTRUCTION INSPECTOR AND THE OWNER'S REPRESENTATIVE WILL ONLY BE RESPONSIBLE TO INSPECT THE CONSTRUCTION OF THE SIGNS AND BARRICADES. THE CONTRACTOR SHALL BE RESPONSIBLE TO THE CONSTRUCTION INSPECTOR, THE BARRICADES AND STOPS DO NOT CONFORM TO ESTABLISHED STANDARDS OR ARE INCORRECTLY PLACED OR ARE INSUFFICIENT IN QUANTITY TO PROTECT THE GENERAL PUBLIC, THE CONTRACTOR SHALL HAVE THE OPTION TO STOP OPERATIONS UNTIL SUCH TIME AS THE CONDITIONS ARE CORRECTED.

1. CONTOURS ARE APPROXIMATE AND WERE CREATED FROM FIELD TOPO OBTAINED BY AN ON-GROUND SURVEY PERFORMED BY INTREPID SURVEYING AND ENGINEERING IN 2018 AND SARA LIDAR AERIAL DATA FOR OUTER AREAS OF THE PROJECT LIMITS FOR REFERENCE.

2. UTILITY LOCATIONS SHOWN ON PLANS ARE APPROXIMATE AND OTHER UTILITIES MAY EXIST WHICH ARE NOT SHOWN; THEREFORE ALL UTILITIES ARE TO BE LOCATED IN THE FIELD BY CONTRACTOR BEFORE AND DURING CONSTRUCTION. THE CONTRACTOR IS RESPONSIBLE FOR ANY DAMAGES, MAINTENANCE, AND/OR PROTECTION OF ALL EXISTING UTILITIES. COST FOR FIELD VERIFICATION SHALL BE INCIDENTAL TO THE BID PRICE PER LINEAR FOOT OF PVC PIPE.

3. CONTRACTOR TO ENSURE MINIMUM DISTANCE BETWEEN PIPES AT CROSSINGS COMPLY WITH 30 TAC 317.13 APPENDIX E SPECIFICATIONS.

4. CONTRACTOR TO ADJUST ALL EXISTING CASTINGS, MANHOLES, VALVE BOXES, FIRE HYDRANTS AND STRUCTURES TO FINISHED GRADES IF NECESSARY.

5. EXISTING UTILITIES IS TO REMAIN IN SERVICE AT ALL TIMES DURING CONSTRUCTION

6. CONTRACTOR TO ENSURE TRAFFIC CONTROL WILL CONFORM WITH THE MOST RECENT TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (TMUTCD).

7. CONTRACTOR MUST NOTIFY TXDOT AND/OR CITY OF KARNES CITY AT LEAST 72 HOURS PRIOR TO PLACEMENT OF TRAFFIC CONTROL DEVICES WITHIN THE RIGHT-OF-WAY.

8. PROPERTY LINE LOCATIONS ARE APPROXIMATE, NO BOUNDARY SURVEY WAS COMPLETED

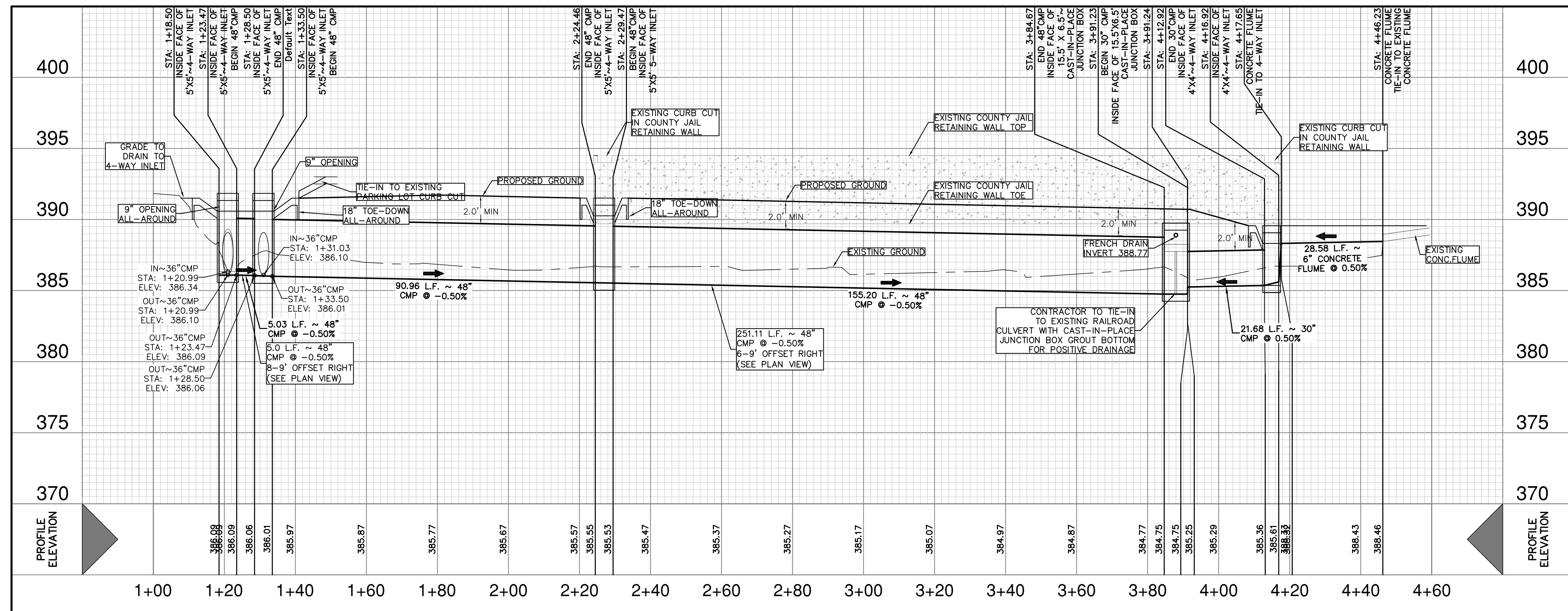
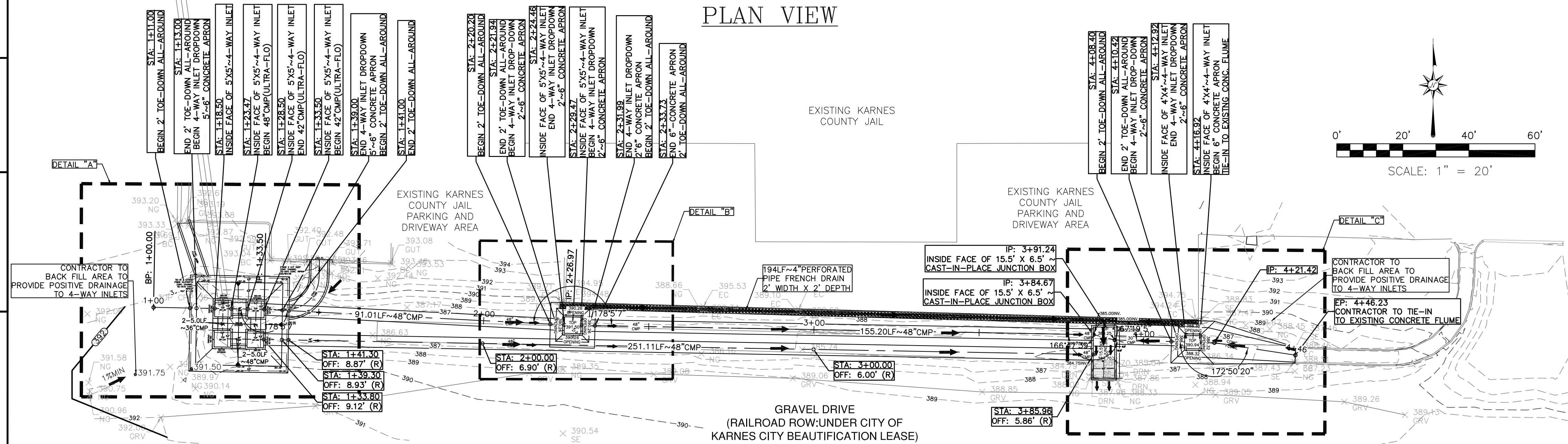
10. CONTRACTOR TO CONTACT ELECTRIC SERVICE PROVIDER (AEP) PRIOR TO BEGINNING CONSTRUCTION NEAR ALL OVERHEAD UTILITY LINES.

11. ALL DISTANCES IN PLAN VIEW ARE APPROXIMATE FOR HORIZONTAL DISTANCES


12. ALL BACKFILL MUST BE FLOWABLE FILL PER TYPICAL TXDOT SPECIFICATIONS

PROPERTY/ADJOINER LINE (APPROX.)  
BURIED UTILITY LINE  
EXISTING SEWER LINE  
EXISTING GAS LINE  
OVERHEAD UTILITY LINE  
FENCE  
ROAD CENTERLINE (APPROX.)  
FEMA FLOODPLAIN LIMITS  
SILT FENCE (EROSION CNTRL)  
FLOW ARROW - EXISTING  
FLOW ARROW - PROPOSED  
5' MAJOR CONTOUR LINE-EXISTING  
1' MAJOR CONTOUR LINE-EXISTING  
5' MAJOR CONTOUR LINE-PROPOSED  
1' MAJOR CONTOUR LINE-PROPOSED  
SPOT ELEVATION - EXISTING  
SPOT ELEVATION - PROPOSED

○	AS MARKED
●	GAS METER
☒	MAIL BOX
☒	TELEPHONE PEDESTAL
⊕	SS MANHOLE
⊕	WATER METER
⊕	UTILITY POLE
⊕	FIRE HYDRANT—EXISTING
⊕	FIRE HYDRANT—PROPOSED
⊕	WATER VALVE—EXISTING
⊕	WATER VALVE—PROPOSED
⊕	POINT
⊕	1/2" IRON ROD FOUND
⊕	1/2" IRON ROD SET
☆	IRON PIPE FOUND
⊕	CONCRETE MONUMENT FOUND
⊕	3/8" IRON ROD FOUND
⊕	WOOD FENCE CORNER POST
⊕	WOOD FENCE CORNER POST
△	STREET/TRAFFIC SIGN
⊕	EXISTING TREE



F-16550



Russell J. Jaskinia  
116894  
LICENSED  
PROFESSIONAL ENGINEER  
2-20-18

**INTERPID**  
**SURVEYING & ENGINEERING**

P.O. BOX 519 → 1004 C STREET  
FLORESVILLE, TX 78114  
D. 830.393.8833 • F. 830.393.3388  
WWW.INTREPIDTX.COM  
TBPLS #10193936 • TBPE #16550

TBPLS #10193936 • TBPE #16550

# STORM DRAIN PLAN & PROFILE

## FOR

### KARNES COUNTY JAIL DRAINAGE IMPROVEMENT KARNES CITY, TEXAS KARNES COUNTY

JOB NO.: 17-0209

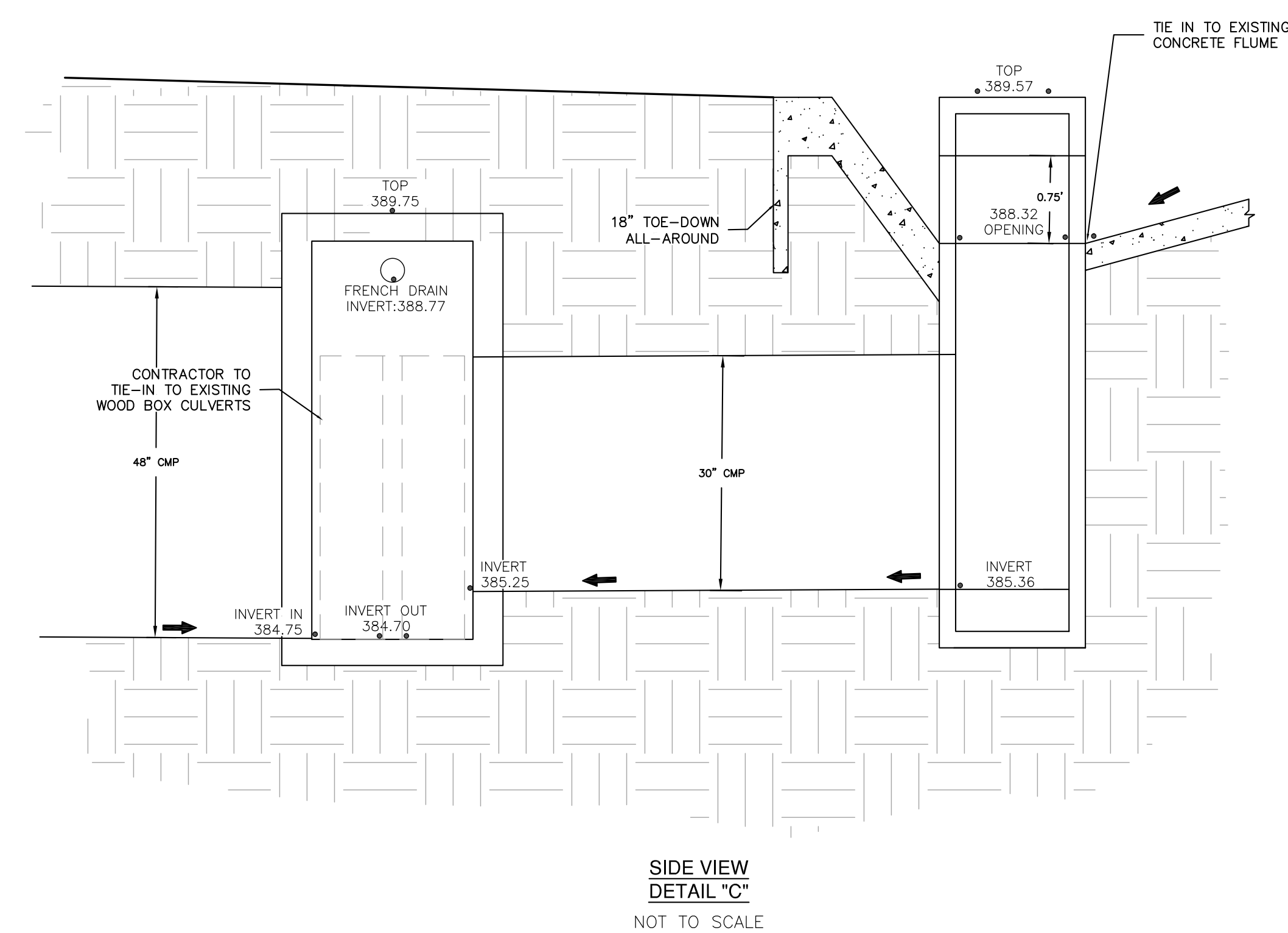
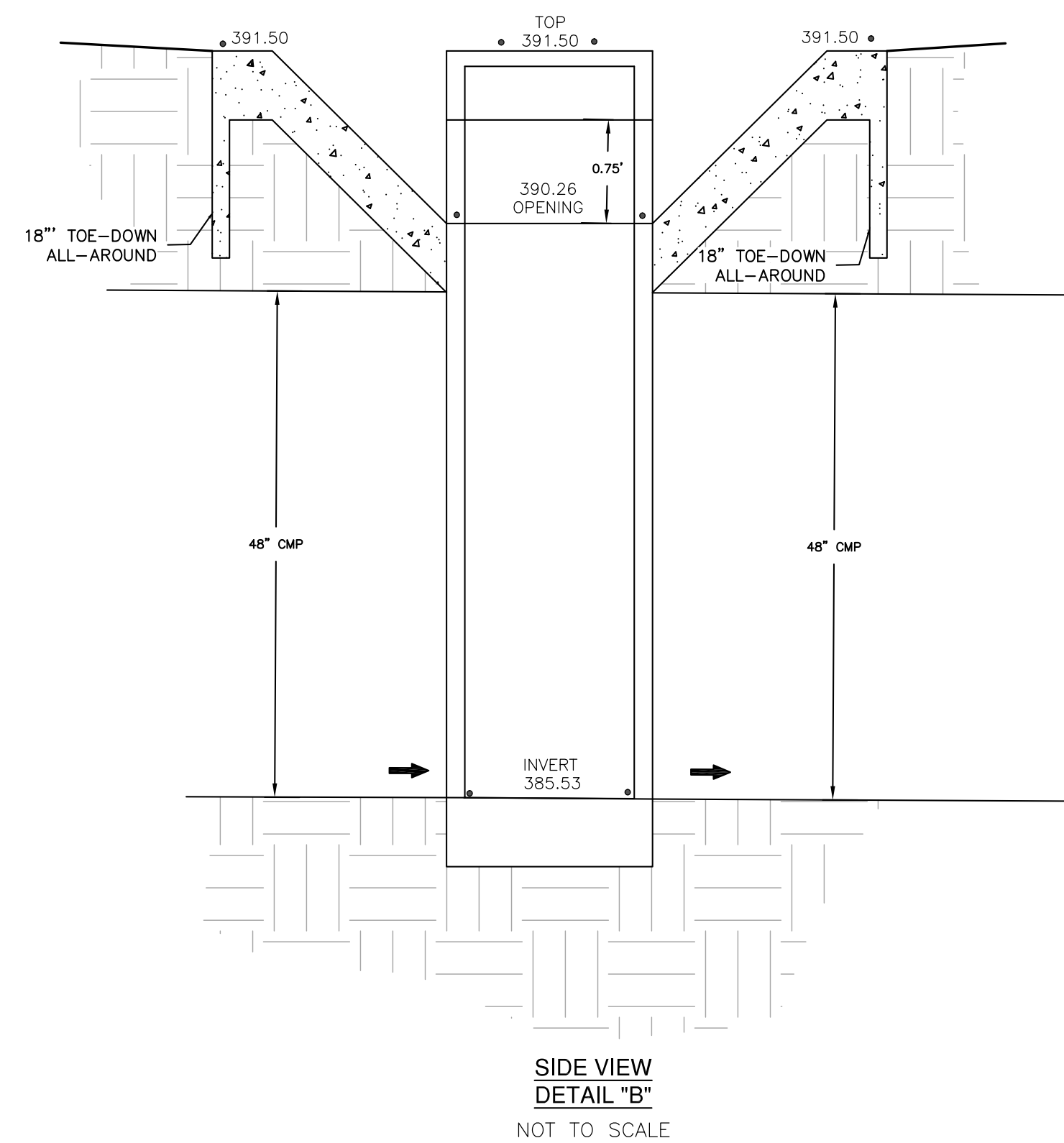
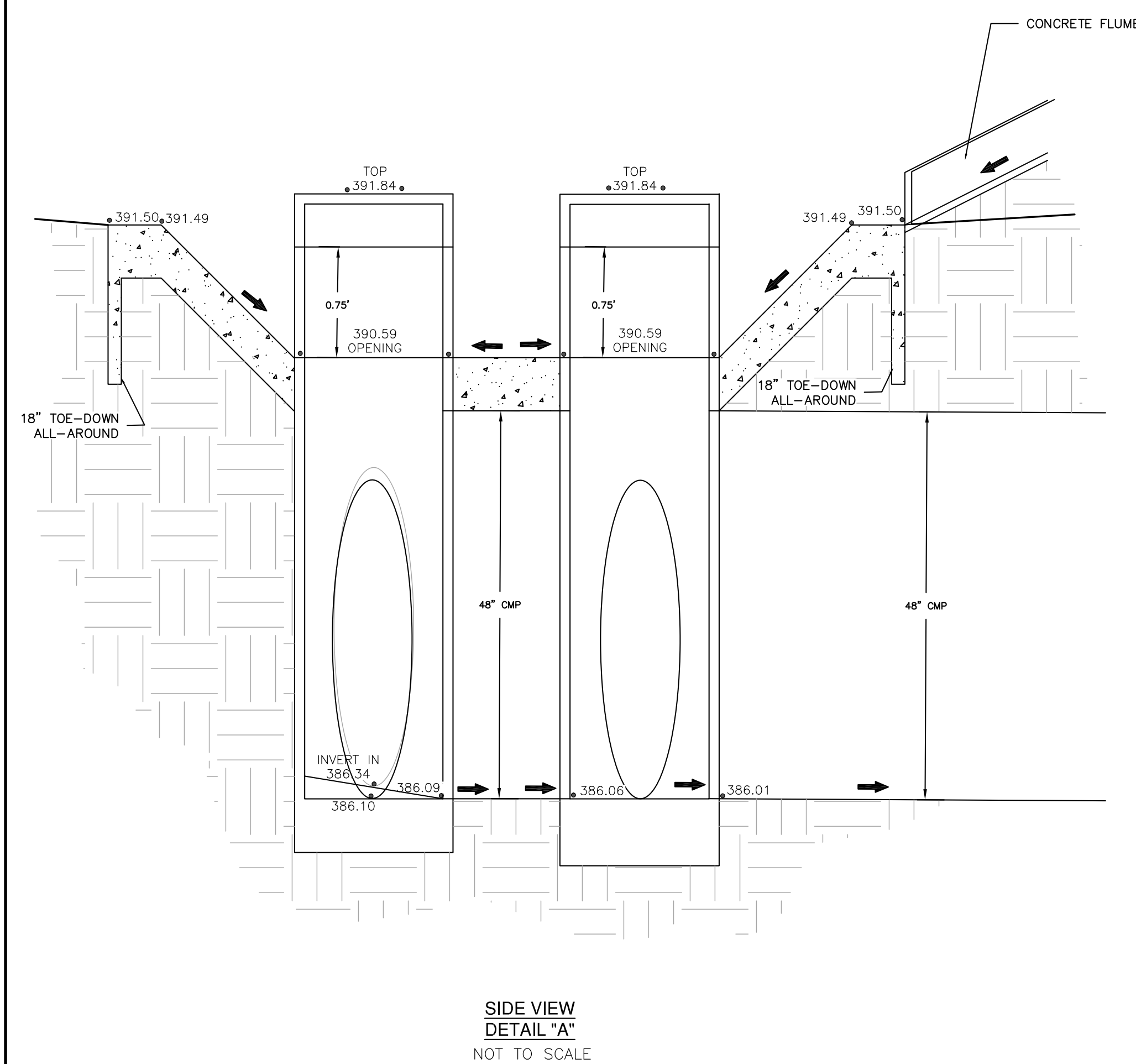
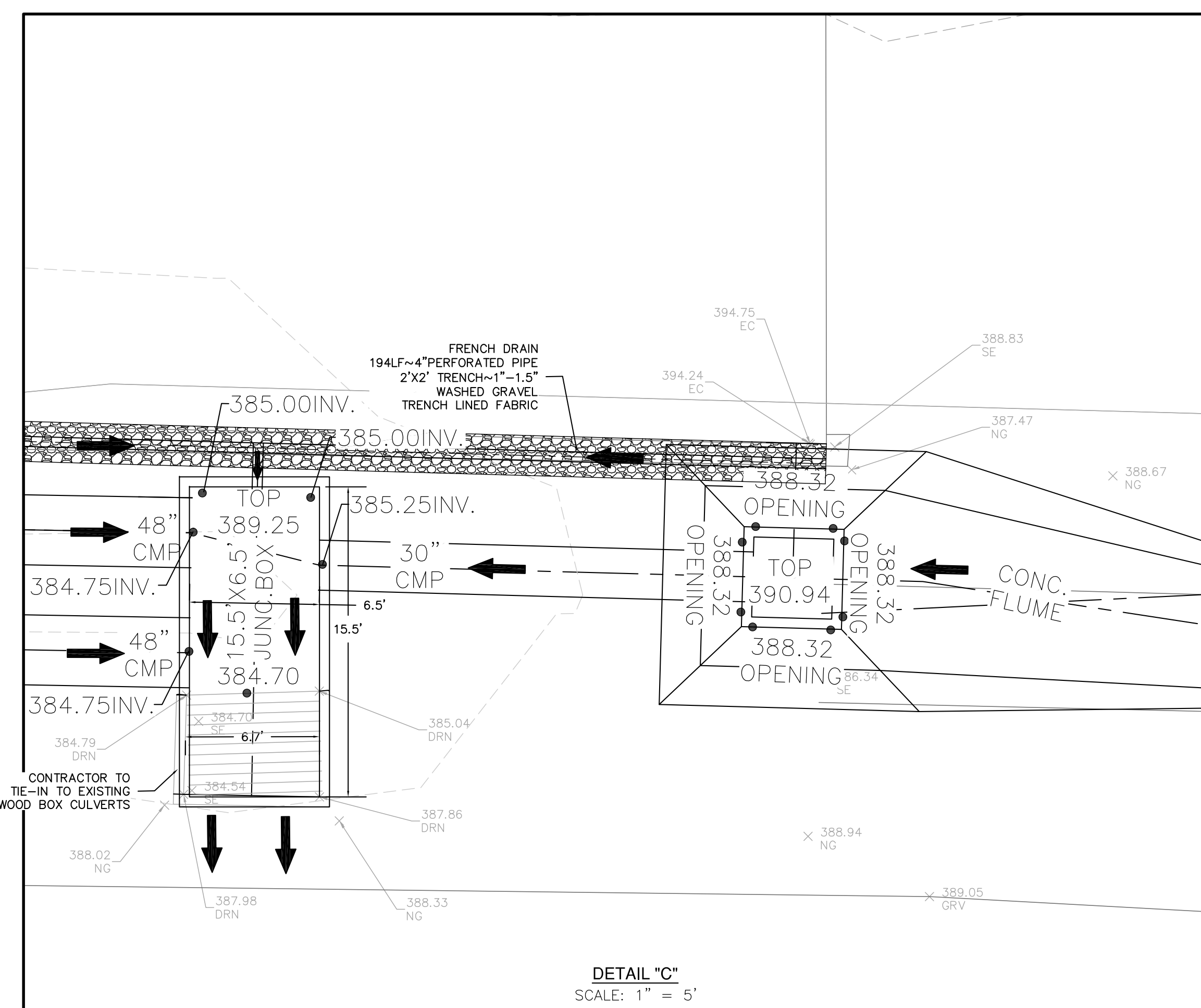
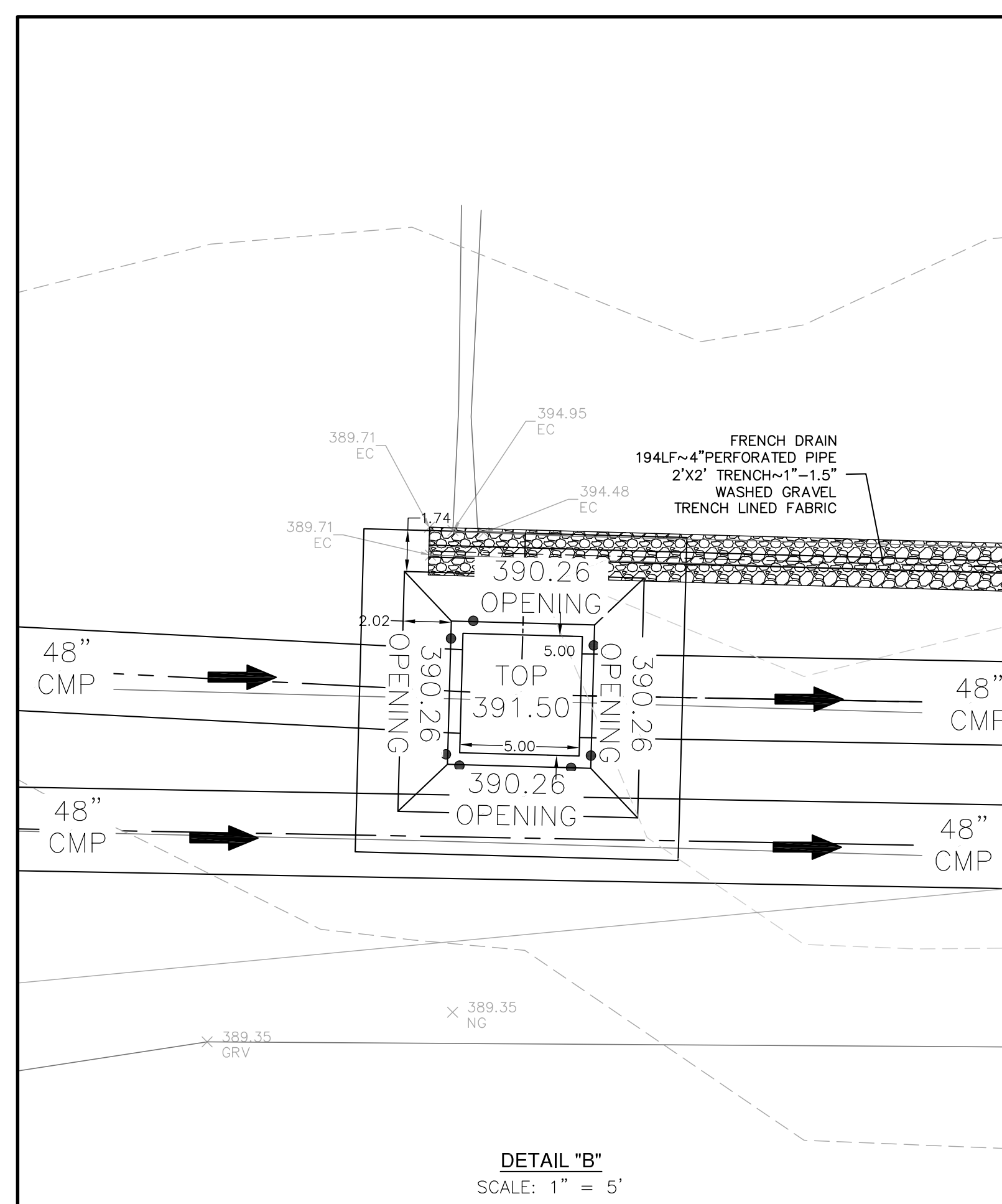
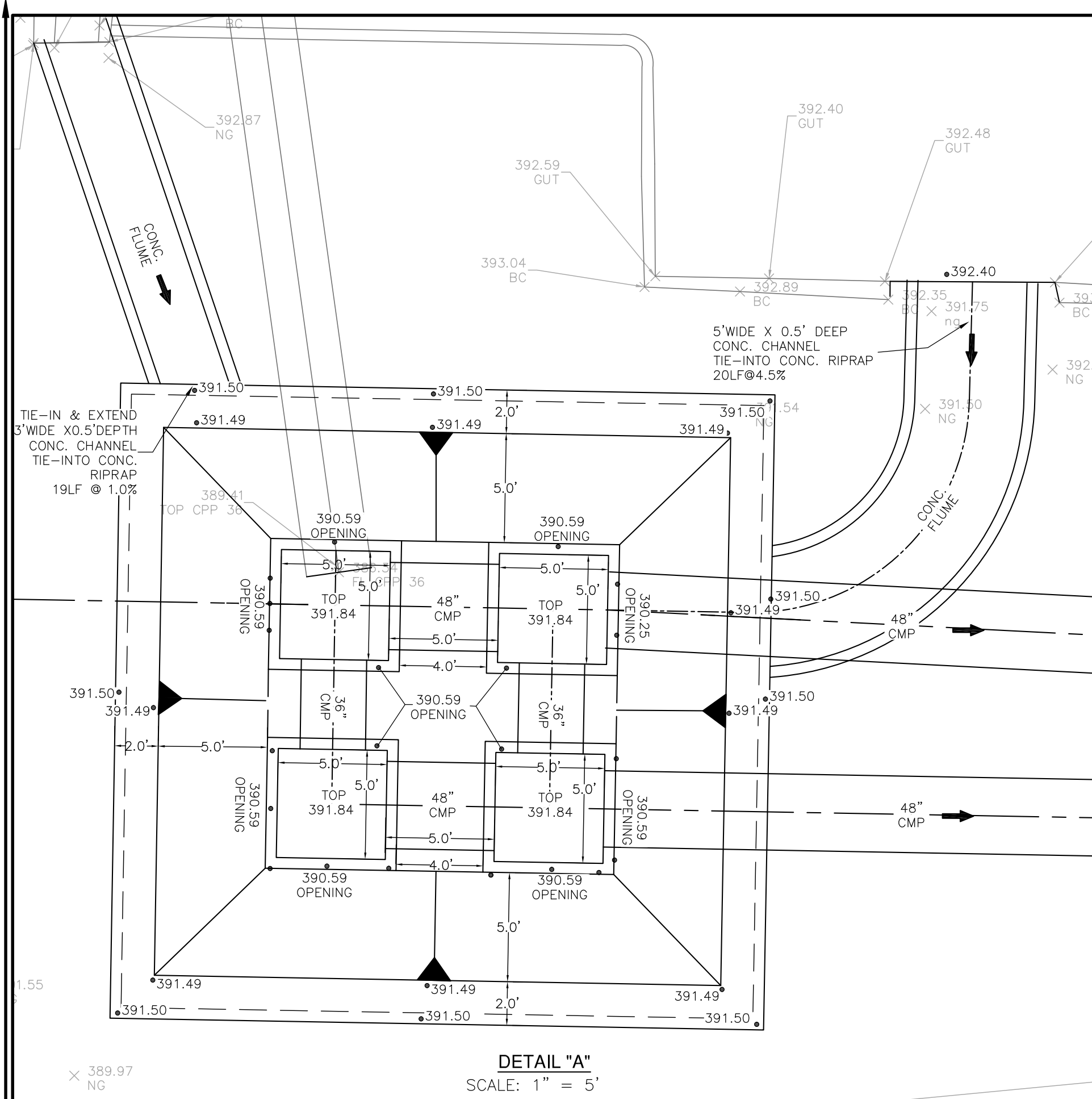
DATE: JANUARY 2018

CHECKED: RJ

DESIGNED: RJ

SHEET: C2.0





REVISIONS:

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FLORESVILLE, TX 78114  
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[WWW.INTREPIDTX.COM](http://WWW.INTREPIDTX.COM)  
TBPLS #10193936 • TBPE #16550

NOTES AND DETAILS  
FOR  
KARNES COUNTY JAIL  
DRAINAGE  
KARNES CITY, TEXAS  
KARNES COUNTY

JOB NO.: 18-0209

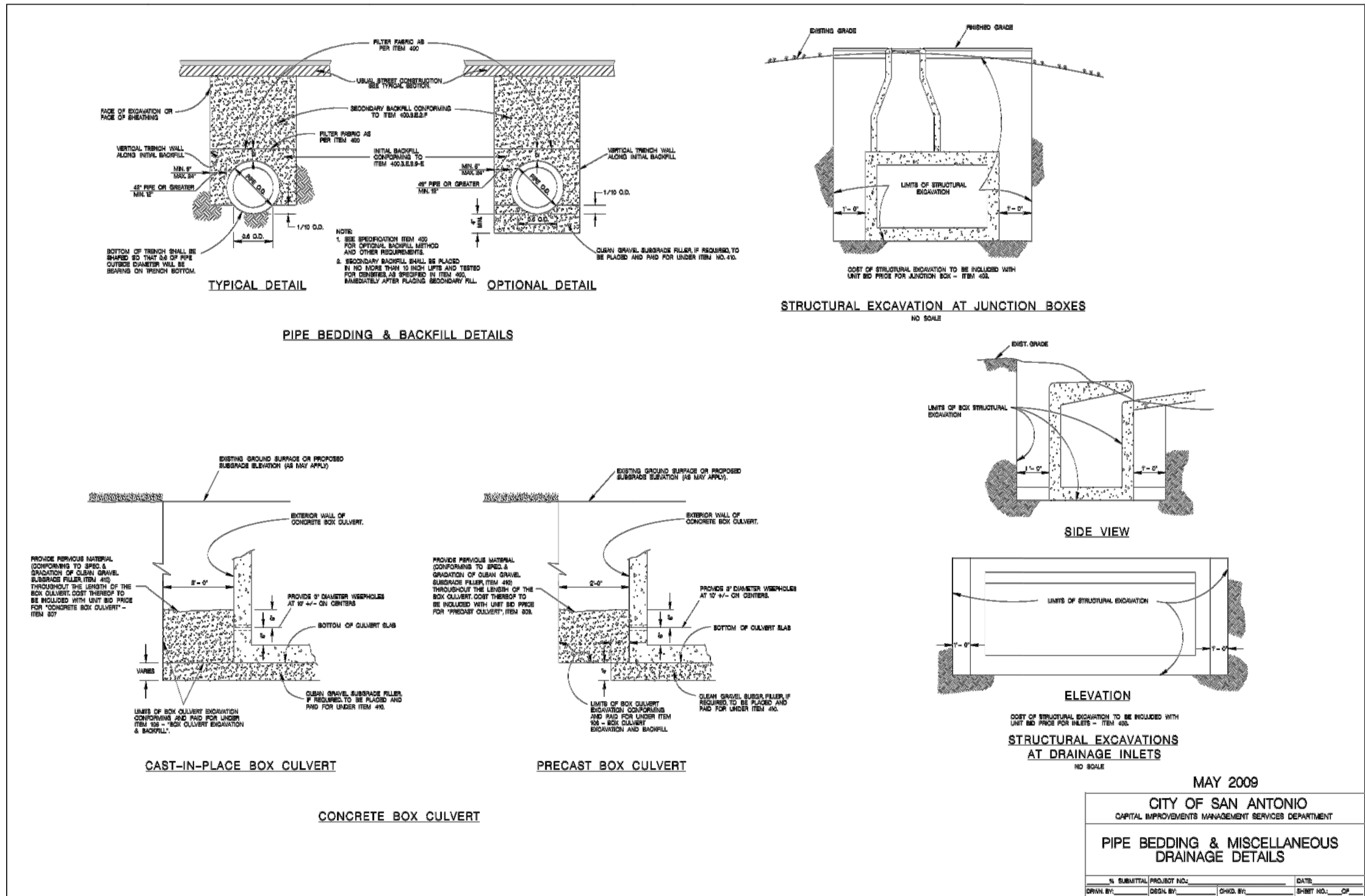
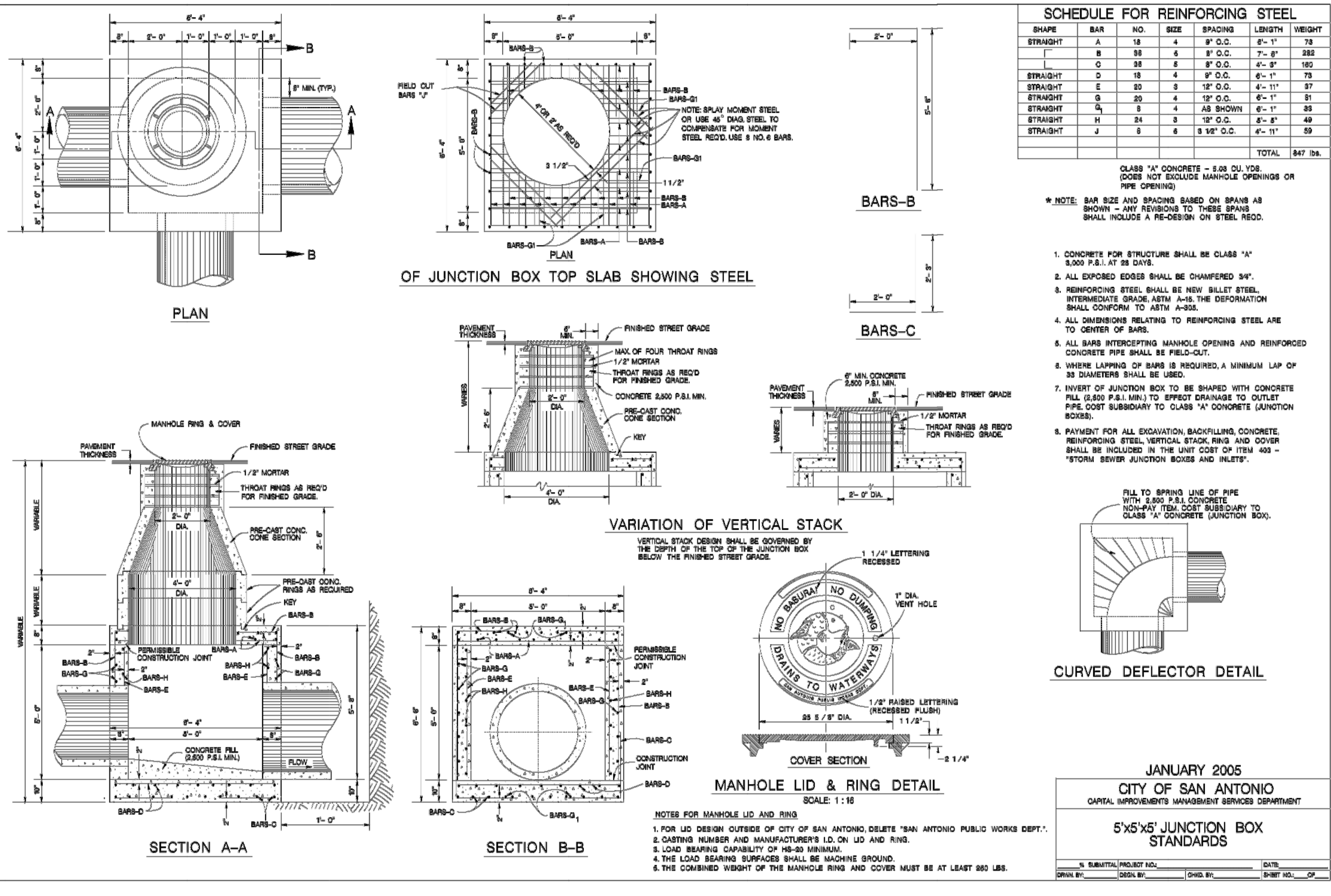
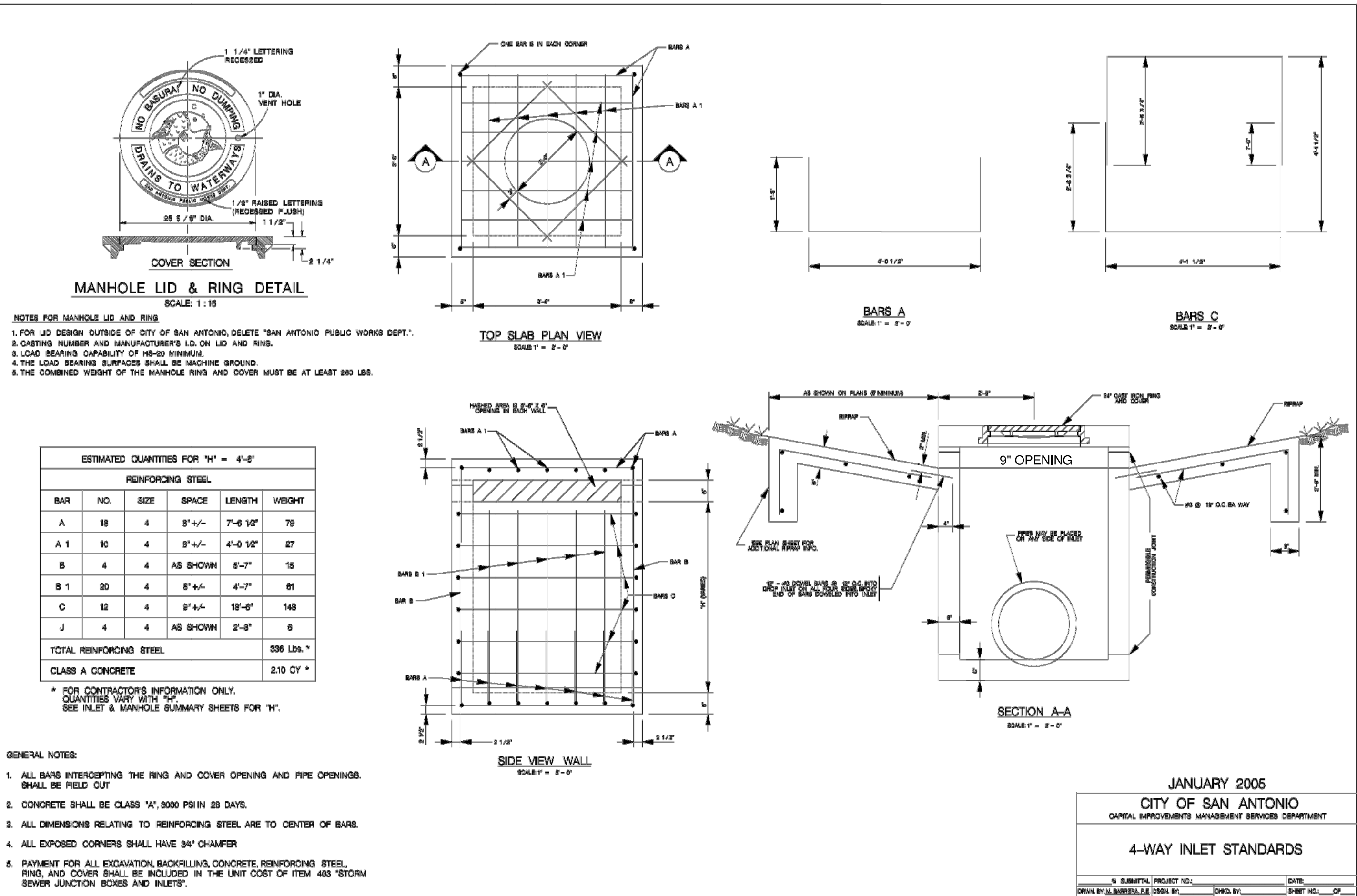
DATE: JANUARY 2018

CHECKED: RJ

DESIGNED: MK

SHEET: C3.0





REVISIONS:

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P.O. Box 519  
1004 C STREET  
FLORESVILLE, TX 78114  
D. 830.393.8833 • F. 830.393.3888  
WWW.INTREPIDTX.COM  
TBPLS #10193936 • TBP# #16550

NOTES AND DETAILS  
FOR  
KARNES COUNTY JAIL  
DRAINAGE  
KARNES CITY, TEXAS  
KARNES COUNTY

JOB NO.: 18-0209  
DATE: JANUARY 2018  
CHECKED: RJ  
DESIGNED: MK  
SHEET: C3.1



# CONFLICT OF INTEREST QUESTIONNAIRE

## FORM CIQ

For vendor doing business with local governmental entity

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

### OFFICE USE ONLY

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

**2** ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_  
Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6** ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;  
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

**Exhibit A to the AIA A107-2007.**  
**Owner's Insurance Requirements of Contractor**

**1. Specific Insurance Requirements**

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

Insurance	Coverage/Limits	Other Requirements
Commercial General Liability (Occurrence Basis)	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 Per Occurrence</li> <li>▪ \$2,000,000 General Aggregate</li> <li>▪ \$2,000,000 Products/Completed Operations Aggregate</li> <li>▪ \$1,000,000 Personal And Advertising Injury</li> <li>▪ Designated Construction Project(s) General Aggregate Limit</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CG 00 01</li> <li>▪ Additional insured status shall be provided in favor of Owner Parties on a combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01.</li> <li>▪ This coverage shall be endorsed to provide primary and non-contributing liability coverage. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and will not seek contribution from any other insurance held by Owner Parties, with Owner Parties' insurance being excess, secondary and non-contributing.</li> <li>▪ Stop Gap coverage shall be provided if any work is to be performed in a monopolistic workers' compensation state.</li> <li>▪ The following exclusions/limitations (or their equivalent(s), are prohibited: <ul style="list-style-type: none"> <li>○ Contractual Liability Limitation CG 21 39</li> <li>○ Amendment of Insured Contract Definition CG 24 26</li> <li>○ Limitation of Coverage to Designated Premises or Project, CG 21 44</li> <li>○ Exclusion-Damage to Work Performed by Subcontractors On Your Behalf, CG 22 94 or CG 22 95</li> <li>○ Exclusion-Explosion, Collapse and Underground Property Damage Hazard, CG 21 42 or CG 21 43</li> <li>○ Any Classification limitation</li> <li>○ Any Construction Defect Completed Operations exclusion</li> <li>○ Any endorsement modifying the Employer's Liability exclusion or deleting the exception to it</li> <li>○ Any endorsement modifying or deleting Explosion, Collapse or Underground coverage</li> <li>○ Any Habitational or Residential exclusion applicable to the Work</li> <li>○ Any "Insured vs. Insured" exclusion except Named Insured vs. Named Insured</li> <li>○ Any Punitive, Exemplary or Multiplied Damages exclusion</li> <li>○ Any Subsidence exclusion</li> </ul> </li> </ul>



Business Auto Liability	Amount of coverage shall be no less than: ▪ \$1,000,000 Per Accident	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CA 00 01</li> <li>▪ Arising out of any auto (Symbol 1), including owned, hired and nonowned</li> </ul>
Workers' Compensation and Employer's Liability	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ Statutory Limits</li> <li>▪ \$1,000,000 Each Accident and Disease</li> <li>▪ Alternate Employer endorsement</li> <li>▪ USL&amp;H must be provided where such exposure exists.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The State in which work is to be performed must listed under Item 3.A. on the Information Page</li> <li>▪ Such insurance shall cover liability arising out of the Contractor's employment of workers and anyone for whom the Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.</li> <li>▪ Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Contractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Contractor and Owner. Where Contractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Contractor is strictly prohibited from subletting any of its work without the express written agreement of Owner.</li> </ul>
Builders Risk	<ul style="list-style-type: none"> <li>▪ Coverage shall be provided in an amount equal at all times to the full contract value, including change orders, and cost of debris removal for any single occurrence.</li> <li>▪ Coverage shall be at least as broad as an unmodified ISO Special form, shall be provided on a completed-value basis, and shall be primary to any other insurance coverage available to the named insured parties, with that other insurance being excess, secondary and non-contributing.</li> <li>▪ The policy must provide coverage for: <ul style="list-style-type: none"> <li>○ Agreed Value Included</li> <li>○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse Included</li> <li>○ Debris removal additional limit \$1,000,000</li> <li>○ Earthquake and Earthquake Sprinkler Leakage \$5,000,000</li> <li>○ Flood \$5,000,000</li> <li>○ Freezing Included</li> <li>○ Mechanical breakdown including hot &amp; cold testing Included</li> <li>○ Ordinance or law \$1,000,000</li> <li>○ Pollutant clean-up and removal \$ 25,000</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Insureds shall include Owner, General Contractor, all Loss Payees and Mortgagees, and subcontractors of all tiers in the Work as Insureds.</li> <li>▪ Such insurance shall cover: <ul style="list-style-type: none"> <li>○ all structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling;</li> <li>○ all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site;</li> <li>○ all property including materials and supplies on site for installation;</li> <li>○ all property including materials and supplies at other locations but intended for use at the site;</li> <li>○ all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and</li> <li>○ other Work at the site identified in the Agreement to which this Exhibit is attached.</li> </ul> </li> <li>• No protective safeguard warranty shall be permitted.</li> <li>• The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed This insurance shall be maintained in effect, unless otherwise provided for the Agreement Documents, until the earliest of: <ul style="list-style-type: none"> <li>○ the date on which all persons and organizations</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Preservation of property</li> <li>○ Theft</li> <li>● Deductible shall not exceed</li> <li>○ All Risks of Direct Damage, Per Occurrence, except</li> <li>○ Named Storm</li> <li>○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence</li> <li>○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V</li> </ul>	<ul style="list-style-type: none"> <li>Included</li> <li>Included</li> <li>\$10,000</li> <li>2% subject to \$50,000 minimum</li> <li>\$100,000</li> <li>\$100,000</li> </ul>	<ul style="list-style-type: none"> <li>who are insureds under the policy agree that it shall be terminated;</li> <li>○ occupancy, in whole or in part;</li> <li>○ the date on which release of substantial completion is executed; or</li> <li>○ the date on which the insurable interests of Contractor in the Covered Property has ceased.</li> <li>● A waiver of subrogation provision shall be provided in favor of all insureds.</li> </ul>
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## 2. **General Insurance Requirements**

### A. **Definitions.** For purposes of this Agreement:

- i. "ISO" means Insurance Services Office.
- ii. "Contractor" shall include subcontractors of any tier.
- iii. "Owner Parties" means Karnes County, Texas ("Owner"), (b) the Project, (c) any lender whose loan is secured by a lien against the Work, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (e) any directors, officers, employees, or agents of such persons or entities, and (f) others as required by the Construction Documents.

### B. **Policies.**

- i. Contractor shall maintain such General Liability in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall provide written representation to Owner stating Work completion date.
- ii. All policies must:
  - a. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed.
  - b. Provide a waiver of subrogation in favor of Owner Parties on all insurance coverage carried by Contractor, whether required herein or not.
  - c. Contain an endorsement providing for thirty (30) days prior written notice of cancellation to Owner.
  - d. Be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.
- iii. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.
- iv. Contractor shall provide to the Owner a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to the Owner prior to the expiration of the previous policy.
- v. Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

### C. **Limits, Deductibles and Retentions**

- i. The limits of liability may be provided by a single policy of insurance or by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
- ii. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the Owner, except as otherwise specified herein. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk. The Contractor shall not be reimbursed for same

**D. Forms**

- i. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, Owner will have the right to require other equivalent forms.
- ii. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Owner.

**E. Evidence of Insurance.** Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
  - a. Owner as certificate holder at Owner's mailing address;
  - b. Insured's name, which must match that on this Agreement;
  - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
  - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
  - e. Additional Insured status in favor of Owner Parties;
  - f. Amount of any deductible or self-insured retention in excess of \$25,000;
  - g. Designated Construction Project(s) General Aggregate Limit;
  - h. Primary and non-contributory status;
  - i. Waivers of subrogation; and
  - j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
  - a. General Liability Additional insured endorsement(s);
  - b. General Liability Schedule of Forms and Endorsements page(s); and
  - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

**F. Contractor Insurance Representations to Owner Parties**

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Contractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If the Contractor shall fail to remedy such breach within five (5) business days after notice by the Owner, the Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Contractor by the Owner. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance, at the Contractor's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Construction Agreement.

**G. Insurance Requirements of Contractor's Subcontractors**

- i. Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.
- ii. The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means of recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

**H. Use of the Owners Equipment**

The Contractor, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use. If the Contractor or any of its agents, employees, subcontractors or suppliers utilize any of the Owners equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Owner, the Contractor shall defend, indemnify and be liable to the Owner Parties for any and all loss or damage which may arise from such use.

**I. Release and Waiver**

The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Contractor and/or its subcontractors pursuant to this Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**

# FELONY CONVICTION NOTIFICATION

State of Texas Legislative Senate Bill No. 1, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person, owner or operator of the business entity has been convicted of a felony." The notice must include a general description of the conduct resulting in the conviction of a felony.

Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction." The district must compensate the person or business entity for services performed before the termination of the contract.

**THIS NOTICE IS NOT REQUIRED OF A PUBLICLY -HELD CORPORATION, BUT THE COMPANY REPRESENTATIVE MUST CHECK OFF A SELECTION BELOW (A, B OR C)**

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

VENDOR'S NAME: \_\_\_\_\_

\_\_\_\_\_  
AUTHORIZED COMPANY OFFICIAL'S NAME (PRINTED)

\_\_\_\_\_  
AUTHORIZED COMPANY OFFICIAL'S SIGNATURE

Date: \_\_\_\_\_

## PLEASE CHECK OFF A SELECTION BELOW

- ( ) A. My firm is a publicly-held corporation, therefore, this report requirement is not applicable.
- ( ) B. My firm is not owned and/or operated by anyone who has been convicted of a felony.
- ( ) C. My firm is owned or operated by the following individual (s) who has/have been convicted of a felony.

Name of Felon (s) \_\_\_\_\_

Details of conviction(s): \_\_\_\_\_

## **INSTRUCTIONS FOR CERTIFICATE OF INTERESTED PARTIES FORM 1295**

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 to the Texas Government Code, Chapter 2252, Subchapter Z, (hereafter referred to as “the Code”), and applies to all contracts entered into on or after January 1, 2016. The Code states Karnes County may not enter into a contract with a business entity unless and until the business entity has submitted a Certificate of Interested Parties (hereafter referred to as “Form 1295”) to Karnes County for filing with the Texas Ethics Commission (hereafter referred to as “TEC”). The Form 1295 requirement imposed upon Karnes County applies to ALL contracts:

- requiring Karnes County Commissioners’ approval; and/or
- renewals, extensions or amendments that must be approved by the Karnes County Commissioners

TEC has made available on its website the new filing application that must be used by prospective vendors to file its Form 1295 with Karnes County. Prospective vendors must use TEC’s application to enter the required information on Form 1295 and print a copy of the completed form containing a unique certification number for its bid or proposal. An authorized agent of the prospective vendor then must sign the printed copy of the completed form and have the Form 1295 notarized. The notarized completed Form 1295 containing the unique certification number then must be submitted with the prospective vendor’s bid or proposed contract to Karnes County to ensure both Karnes County and prospective vendor meet the Code requirements.

Form 1295 must be completed on-line by the business entity. It is accessible at:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

Instructional videos on logging in and creating Form 1295 are provided on the above TEC website.

Each prospective vendor should take appropriate steps prior to completion of Form 1295 to familiarize itself with the Code and the TEC rules published in Title 1, Part 2, Chapter 46 of the Texas Administrative Code. The business entity takes full responsibility for completing the form and interpreting the Code. Questions may be directed to TEC during normal business hours at 512-463-5800.

The completed, signed and notarized Form 1295 must be mailed to or provided with a bidders response to the Request for Bids:

Karnes County  
Facilities Maintenance Manager  
210 W. Calvert, Suite 160  
Karnes City, Texas 78118

Karnes County will notify the TEC, using the TEC's filing application, of the receipt of the filed Form 1295 and certification of filing not later than the 30th day after the execution of the contract by Karnes County and the vendor.

**PAYMENT BOND**

THE STATE OF TEXAS

§

KNOW ALL BY THESE PRESENTS:

COUNTY OF KARNES

§

§

That we, \_\_\_\_\_, as Principal herein, and (2) \_\_\_\_\_, a corporation organized and existing under the laws of the State of Texas and who is authorized and admitted to use surety bonds in the State of Texas, as surety, are held and firmly bound unto the County of Karnes so located in Karnes County, Texas, Obligee herein, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Obligee dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, which contract is hereby referred to herein as "the Contract" and is incorporated herein to the same extent as if copied at length, for the following project: Drainage Improvements Project at the Karnes County Jail.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall directly or indirectly timely make payment to each and every claimant (as defined in Chapter 2253, Texas Government Code, as amended) supplying labor or materials in the prosecution of the work under the Contract, then this obligation shall be void; otherwise, to remain in full force and effect. *This obligation may be enforced by the Obligee in the event of bankruptcy or default by Principal in payments to suppliers of labor or materials in the prosecution of the work under the Contract, in either of which events the Surety shall make such payments as Principal has failed to pay and as may be required to complete the work under the contract.* The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and any notices provided in such regard shall not create as to any party a duty related thereto.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be



determined in accordance with the provisions of said statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**The date of bond shall not be prior to date of Contract.**

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(S E A L)

\_\_\_\_\_  
Witness as to Principal

ATTEST:

\_\_\_\_\_  
Secretary

(S E A L)

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Attorney in Fact

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

**An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.**

Approved as to Form:

Karnes County  
210 W. Calvert  
Karnes City, Texas 78118

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PERFORMANCE BOND**

THE STATE OF TEXAS

§

KNOW ALL BY THESE PRESENTS:

§

COUNTY OF \_\_\_\_\_

§

That we, [Contractor], as Principal herein, and [Surety], a corporation organized and existing under the laws of the State of [Surety's state of incorp], and who is authorized and admitted to issue surety bonds in the State of Texas, Surety herein, are held and firmly bound unto Karnes County, located in Karnes County, Texas, Obligee herein, in the sum of [verbal amount of bond] Dollars (\$[numeric amount of bond]) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a certain written contract with the Obligee dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, herein referred to as "the Contract" and incorporated herein and made a part hereof for all purposes, for the construction of Drainage Improvements Project at the Karnes County Jail.

NOW, THEREFORE, the condition of this obligation is such, if the said Principal shall faithfully perform the work in accordance with the plans, specifications, and other Contract Documents and shall fully indemnify and hold harmless the Obligee from all costs and damages which Obligee may suffer by reason of Principal's failure to perform the Work in conformity with the Contract Documents, and reimburse and repay Obligee for all outlay and expense that Obligee may incur in making good such default, then this obligation shall be void; otherwise, to remain in full force and effect. Whenever Contractor shall be declared by Obligee to be in default under the Contract, the Surety shall, upon request of Obligee and within seven (7) calendar days from receipt of Obligee's notice of Contractor's default, commence and thereafter complete performance of Contractor's obligations under the Contract. This Bond covers all contractual obligations of Contractor under the Contract, including, without limitation, the indemnity, warranty and guaranty obligations. The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of any of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and any notices provided in such

regard shall not create as to any party a duty related thereto. The penal limit of this bond shall automatically be increased by the amount of any change order, supplemental agreement or amendment which increases the price of the Contract.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in accordance with the provisions of such statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**The date of bond shall not be prior to date of Contract.**

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(S E A L)

\_\_\_\_\_  
Witness as to Principal

ATTEST:

\_\_\_\_\_  
Secretary

(S E A L)

\_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Attorney in Fact

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Witness as to Surety

Telephone Number: \_\_\_\_\_

**An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.**

Approved as to Form:

Karnes County  
210 W. Calvert  
Karnes City, Texas 78118

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.  <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ <b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ► _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  Exempt payee code (if any) _____  Exemption from FATCA reporting code (if any) _____  <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-				-	
or									
Employer identification number									
				-					

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ►	Date ►
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## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

**Note:** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

## What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note: ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

### Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

### Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

### Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

#### Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947



The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note:** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

## Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

## Line 6

Enter your city, state, and ZIP code.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note:** See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.SSA.gov](http://www.SSA.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/Businesses](http://www.irs.gov/Businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. Go to [www.irs.gov/Forms](http://www.irs.gov/Forms) to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to [www.irs.gov/OrderForms](http://www.irs.gov/OrderForms) to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note:** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.**

You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**What Name and Number To Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
5. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>1</sup> The actual owner <sup>1</sup>
6. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

**\*Note:** The grantor also must provide a Form W-9 to trustee of trust.

**Note:** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Secure Your Tax Records From Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.**

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at [spam@uce.gov](mailto:spam@uce.gov) or report them at [www.ftc.gov/complaint](http://www.ftc.gov/complaint). You can contact the FTC at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see [www.IdentityTheft.gov](http://www.IdentityTheft.gov) and Pub. 5027.

Visit [www.irs.gov/IdentityTheft](http://www.irs.gov/IdentityTheft) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

# DRAFT AIA® Document A107™ – 2007

## *Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope*

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

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

«  
»  
« »

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

« »« »  
« »  
« »  
« »

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

«

The Architect:  
(Name, legal status, address and other information)

«  
»  
« »

The Owner and Contractor agree as follows.

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

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

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### ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

The Contractor shall prosecute the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards for projects similar to the Project, using qualified, careful, and efficient workers, in conformity with the provisions of this Agreement and in strict compliance with the Contract Documents, and with Applicable Laws, as defined below, and with other applicable governmental regulations and ordinances.

As used herein, the term "Applicable Laws" shall mean any law, statute, ordinance, rule, regulation, order, or determination of any federal, state, or local governmental authority, all as in effect as of the date of the Agreement,

including without limitation all applicable zoning ordinances and building codes, accessibility laws and codes, the United States Occupational Safety and Health Administration requirements, the Americans with Disabilities Act requirements, requirements under Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination in Employment Act requirements, any environmental laws, applicable storm water, street, utility and other related infrastructure requirements, regulations promulgated by the Environmental Protection Agency, Storm Water Pollution Prevention Plan requirements, and requirements related to the use, removal, storage, transportation, disposal and remediation of Hazardous Materials, flood disaster laws, and health laws and regulations.

## ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be established in a Notice to Proceed issued by the Owner.

« »

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 The Contractor shall achieve Substantial Completion of the entire Work not later than « » ( « » ) days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

« »

### Portion of Work

« »

### Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

« »

## ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

*(Check the appropriate box.)*

[ ☒ ] Stipulated Sum, in accordance with Section 3.2 below

[ ☐ ] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

[ ☐ ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

*(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)*

§ 3.2 The Stipulated Sum shall be « » (\$ « » ), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

« »

§ 3.2.2 Unit prices, if any:



(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
« »		

**§ 3.2.3** Allowances included in the stipulated sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Allowance
« »	

**ARTICLE 4 PAYMENTS**

**§ 4.1 PROGRESS PAYMENTS**

**§ 4.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 4.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

**§ 4.1.3** Provided that an Application for Payment is received by the Architect not later than the « 25<sup>th</sup> » day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the « 15<sup>th</sup> » day of the « next » month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than « Forty-five » ( « 45 » ) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

**§ 4.1.4** Retainage, if any, shall be withheld as follows:

« 10% »

**§ 4.1.5** Payments due and unpaid under the Contract shall be governed by the provisions of the Chapter 2251 of the Texas Government Code.

**§ 4.1.6** With each Application for Payment, and as a condition to such payment by the Owner, Contractor shall submit a Conditional Waiver and Release on Progress Payment from Contractor and each Subcontractor or supplier. At the conclusion of the Work, Contractor shall submit a Bills Paid Affidavit on such form as provided under Texas law.

**§ 4.2 FINAL PAYMENT**

**§ 4.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a guaranteed maximum price; and
- .3 a final Certificate for Payment has been issued by the Architect.
- .4 Contractor has delivered to Owner an All Bills Paid Affidavit confirming that all subcontractors or suppliers have been paid in full or setting forth the name of each unpaid subcontractor or supplier and the amounts owed to same;
- .5 Conditional Waiver and Release on Final Payment documents have been received from Contractor and its Subcontractors; and
- .6 Redline Drawings.

**§ 4.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment and after all conditions to final payment set forth in Section 4.2.1 above have

been met. Compliance with the requirements of Section 4.2.1 is an express condition precedent to the Owner's obligation to make payment under this Section. However, if Owner has received a notice of intent to lien the Project then Owner may withhold final payment until fifteen (15) days after the deadline to file the lien has passed under the Applicable Laws, or as follows:

<< >>

## ARTICLE 5 DISPUTE RESOLUTION

### § 5.1 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by, mediation pursuant to Section 21.3, the method of binding dispute resolution shall be as follows:

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

[ ☐ ] Arbitration pursuant to Section 21.4 of this Agreement

[ ☒ ] Litigation in a court of competent jurisdiction. Venue for any dispute arising out of this Agreement will be in Karnes County District Court, Karnes County, Texas.

[ ☐ ] Other (Specify)

<< >>

## ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A107–2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 6.1.2 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
<< >>			

§ 6.1.3 The Specifications:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

<< >>

Section	Title	Date	Pages
<<>>			



§ 6.1.4 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

<< >>

Number

<< >>

Title

Date

§ 6.1.5 The Addenda, if any:

Number

<< >>

Date

Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are enumerated in this Article 6.

§ 6.1.6 Additional documents, if any, forming part of the Contract Documents:

- .1 Exhibit A: Contractor's Insurance Requirements  
Exhibit B: Contractor's Qualifications and Assumptions

- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

<< >>

- .3 Other documents:

(List here any additional documents that are intended to form part of the Contract Documents.)

<< >>

**ARTICLE 7 GENERAL PROVISIONS**

**§ 7.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 7.2 THE CONTRACT**

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

**§ 7.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

## **§ 7.4 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

## **§ 7.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**§ 7.5.1** The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 7.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

## **§ 7.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmission, unless otherwise provided in the Agreement or in the Contract Documents.

## **ARTICLE 8 OWNER**

### **§ 8.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 8.1.1** The Owner shall furnish all necessary surveys and a legal description of the site.

**§ 8.1.2** The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 8.1.3** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

### **§ 8.2 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents or Applicable Laws, or fails to carry out the Work in accordance with the Contract Documents or Applicable Laws, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

If suspension of the Work is warranted by reason of unforeseen conditions which are likely to adversely affect the quality of the Work if such Work were continued, Owner may suspend the Work by written notice to the Contractor. In such event, the Contract Time and the Contract Sum shall be adjusted accordingly, subject to the terms of Section 14.5 herein. If Contractor, in its reasonable judgment, believes that a suspension is warranted by reason of unforeseen circumstances which may adversely affect the quality of the Work if the Work were continued, Contractor shall immediately notify Owner in writing of such belief.

### **§ 8.3 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner, without prejudice to any other remedy the Owner may have, may correct such deficiencies and may deduct the reasonable cost thereof, including but not limited to Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor.

It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (a) make Contractor the agent, servant, or employee of the Owner, or (b) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives with respect to the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein. The presence of the Owner or its representatives at the Project site does not imply acceptance or approval of the Work.

## **ARTICLE 9 CONTRACTOR**

### **§ 9.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 9.1.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**§ 9.1.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

**§ 9.1.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

### **§ 9.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

**§ 9.2.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

### **§ 9.3 LABOR AND MATERIALS**

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

**§ 9.3.2** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces.

**§ 9.3.3** The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification. The Contractor warrants that modifications suggested by the Contractor will achieve satisfactory results.

## **§ 9.4 COVENANT OF PERFORMANCE**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

## **§ 9.5 TAXES**

The Contractor shall pay sales, consumer, use and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

## **§ 9.6 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS**

**§ 9.6.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit, other regulatory work permits, work area isolation, occupant protection barriers, as well as other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 9.6.2** The Contractor shall comply with and give notices required by Applicable Laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

## **§ 9.7 ALLOWANCES**

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Allowance amounts shall not include the Contractor's costs for unloading and handling at the site, labor, installation, overhead, and profit. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order.

## **§ 9.8 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 9.8.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Thereafter, the Contractor shall prepare and update the construction schedule on a monthly basis, if not more frequently at the Contractor's discretion, to be submitted to the Owner with each Application for Payment.

**§ 9.8.2** The Contractor shall perform the Work in accordance with the most recent schedule submitted to the Owner and Architect.

## **§ 9.9 SUBMITTALS**

**§ 9.9.1** The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

**§ 9.9.2** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

## § 9.10 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall be solely responsible for providing a safe place for performance of the Work.

## § 9.11 CUTTING AND PATCHING

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

## § 9.12 CLEANING UP

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material from and about the Project. If the Contractor fails to clean up the designated area within twenty-four (24) hours written notice, the Owner may do so and Owner shall be entitled to reimbursement from the Contract for the costs associated therewith.

## § 9.13 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

## § 9.14 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

## § 9.15 INDEMNIFICATION

**§ 9.15.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, OWNER'S CONSULTANTS, AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, BUT ONLY IF CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM IS, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART OR CONTRIBUTED BY THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF ANY PARTY INDEMNIFIED HEREUNDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 9.15.1.**

**§ 9.15.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 9.15 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 9.15.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR SUBCONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.**



## ARTICLE 10 ARCHITECT

§ 10.1 The Architect will provide administration of the Contract and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 10.2 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. The Architect's or Architect's representative's presence at the Project site shall not imply concurrent or subsequent approval of the Work. The Contractor shall call specific items to the Architect's attention in writing if it wishes to obtain the Architect's opinion.

§ 10.4 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.5 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.6 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.7 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.8 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 10.9 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

## ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of the Subcontractors or suppliers for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 11.3** Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

## **ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

**§ 12.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in Article 21.

**§ 12.2** The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

**§ 12.3** The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

## **ARTICLE 13 CHANGES IN THE WORK**

**§ 13.1** By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor and Architect, or by written Construction Change Directive signed by the Owner and Architect.

**§ 13.2** Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by one of the following methods:

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

Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive in Applications for Payment. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

**§ 13.3** The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

**§ 13.4** If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that that the Contractor provides notice to the Owner promptly and before conditions are disturbed but in no event later than seven (7) days from the discovery of the condition. The Contractor shall not be entitled to any adjustment in the Contract

Sum or Contract Time for any concealed or unknown condition encountered in the performance of the Work if such condition: (a) is of a usual nature or does not differ materially from those ordinarily encountered and generally recognized as inherent to work of the nature provided for in this Contract; (b) is of a usual nature and does not differ materially from those conditions disclosed or which could have been investigated or were reasonably inferable by the Contractor from the Contract Documents and field conditions at the site of the Project; or (c) is of a nature which the Contractor should reasonably have known or anticipated based on the area in which the site of the Project is located, the type of improvements involved, and the practices prevalent in the construction industry.

§ 13.5 If the Owner and Contractor are unable to agree on the amount of any cost or credit to Owner resulting from a change in the Work, the Contractor shall promptly proceed with and diligently prosecute such change in the Work and the Contract Sum shall be equitable adjusted based upon the cost of the work and as mutually agreed between Contractor and Owner. The Contractor shall keep and present to the Owner and Owner's Project Manager an itemized accounting together with appropriate supporting documentation for use in determining the cost or credit to the Owner. If the Contractor and Owner cannot agree on the amount of any cost or credit to Owner resulting from a change in the Work following completion of such Work, either party may submit a Claim in accordance with Article 21 of this Agreement.

## ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.4.3.

### § 14.5 Delays.

§ 14.5.1 If the critical path of the Work of the Contractor is delayed at any time in the commencement or progress of the Work (1) by fire, unusually severe weather, unavoidable casualties or other causes beyond the Contractor's control and not due to or resulting from the negligence, inattention or fault of Contractor or any of its Subcontractors ("Excusable Delay"); (2) by an act or neglect of the Owner, or of an employee of Owner, or of a separate contractor employed by the Owner; or (3) by changes ordered in the Work, the Contract Time may be extended by Change Order for such time as may be reasonably determined by the Architect and approved by Owner and then only for the amount of time Contractor has been actually and directly delayed and only if allowed under § 14.5.2 below, net of any contingency or "float" time included in the Project Schedule. Notwithstanding the foregoing, the **Contractor acknowledges and agrees that neither adjustments in the Contract Time nor adjustments in the Contract Sum** will be permitted if any delay (1) is caused by the negligence or fault of the Contractor and/or its Subcontractors or (2) could have been avoided by the Contractor's timely notice to the Owner of the delay. Contractor acknowledges the limitations of this provision and shall cooperate with Owner to at all times minimize and mitigate the impact of any delay to completion of the Work.

§ 14.5.2 Except as may otherwise be expressly provided in the Contract Documents, **extensions of time** shall be the Contractor's **sole remedy** for delay, including any Excusable Delay, unless the delay is caused by the Owner's negligent acts or omissions, intentional interference, fraud, or misrepresentation. In the event of any delay entitling Contractor to an increase in Contract Sum, except when due to Owner's intentional interference or fraud, Contractor's recovery shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of that portion of delay or delays which cause the Contract Time to be extended. Direct costs do not include overhead, profit, or any consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's reasonable exercise of any of its rights or remedies under the Contract Documents, regardless of the extent or frequency, shall not under any circumstances be construed as interference with the Contractor's performance of the Work. In no event shall the Contractor be entitled to any other compensation or recovery of any damages in connection with any Excusable Delay. Contractor shall not be compensated nor given extensions of time for delays that are unexcused.



## ARTICLE 15 PAYMENTS AND COMPLETION

### § 15.1 APPLICATIONS FOR PAYMENT

§ 15.1.1 The Contractor shall submit to the Owner and Architect, before the first Application for Payment, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used in reviewing the Contractor's Applications for Payment.

§ 15.1.2 The Contractor must submit to the Architect itemized Application for Payment for Work completed on a monthly basis in accordance with a schedule approved by the Owner. Each Application for Payment must be consistent with the approved Schedule of Values. The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, partial lien releases, waivers, or other documents, and shall reflect retainage.

§ 15.1.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests. IF ANY OF THE CONTRACTOR'S SUBCONTRACTORS OR SUPPLIERS, OF ANY TIER, ATTEMPTS TO FILE A LIEN, GIVES THE OWNER NOTICE OF A CLAIM FOR NONPAYMENT, OR OTHERWISE INITIATES ANY ACTIONS, LAWSUITS OR CLAIMS BASED ON NONPAYMENT (COLLECTIVELY, "SUBCONTRACTOR NONPAYMENT CLAIMS"), THE CONTRACTOR, THE CONTRACTOR SHALL DEFEND AND INDEMNIFY THE OWNER FOR ALL COSTS INCURRED IN CONNECTION WITH SUCH SUBCONTRACTOR NONPAYMENT CLAIMS, INCLUDING ALL ATTORNEYS FEES INCURRED BY THE OWNER, EXCEPT TO THE EXTENT THAT SUCH SUBCONTRACTOR NONPAYMENT CLAIMS ARE THE RESULT OF OWNER'S FAILURE TO PAY THE CONTRACTOR UNDISPUTED SUMS IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.

### § 15.2 CERTIFICATES FOR PAYMENT

§ 15.2.1 The Architect will, within 10 days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.2.3.

§ 15.2.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect.

§ 15.2.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.2.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.2.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect or Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents or Applicable Laws; or
- .8 failure of the Contractor to perform any other material obligations of the Contract.

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

### § 15.3 PROGRESS PAYMENTS

§ 15.3.1 The Contractor shall pay each Subcontractor, no later than Seven (7) days after receipt of payment, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in similar manner.

§ 15.3.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

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

§ 15.3.4 If Contractor disputes any determination with regard to all or any part of an Application for Payment or a certification of payment, Contractor shall nevertheless expeditiously continue to prosecute the Work, but shall be entitled to make a Claim as provided in this Agreement.

### § 15.4 SUBSTANTIAL COMPLETION

§ 15.4.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use all required inspections by governmental authorities and by Owner applicable to the Contractor's Work have been conducted; all final approvals required for beneficial use or occupancy have been obtained from authorities with jurisdiction over the Project, unless failure to obtain such approvals is due to reasons other than the fault of the Contractor or its Subcontractors; and all other conditions precedent to Substantial Completion as set forth in the Contract Documents have been satisfied.

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

§ 15.4.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.4.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## **§ 15.5 FINAL COMPLETION AND FINAL PAYMENT**

**§ 15.5.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. The Contractor's written notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any additional services of the Owner or the Architect until the Work is determined to be finally complete. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable, less any amount withheld pursuant to the Contract Documents. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled and that all requisite items required under Section 4.2. have been provided by Contractor.

**§ 15.5.2** Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

**§ 15.5.3** The making of final payment shall constitute a waiver of claims by the Owner except those arising from

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

**§ 15.5.4** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY**

### **§ 16.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Owner assumes no responsibility or liability for the physical conditions or safety of the Project site. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 all persons at the site and other persons who may be affected by the Work or other operations of the Contractor;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property (other than damage or loss insured under property insurance required by the Contract Documents) caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3, except for damage or loss attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

**§ 16.1.1** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards,

promulgating safety regulations and notifying owners and users of adjacent sites and utilities. Contractor shall also be responsible for all measures reasonably necessary to protect any property adjacent to the Project and improvements thereon.

**§ 16.1.2** When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause.

## **§ 16.2 HAZARDOUS MATERIALS**

**§ 16.2.1** The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials. In the event the Contractor encounters on the Site material reasonably believed to be a Hazardous Material (other than those for which the Contractor may have specific responsibility for remediation under the Agreement), and the Contractor's reasonable precautions will be inadequate to prevent foreseeable damage or injury and the Contractor cannot proceed with the Work in the absence of the removal, containment or remediation of the Hazardous Material, the Contractor must immediately stop Work in the area affected and report the condition to the Owner and the Architect, in writing, within 24 hours of discovery.

**§ 16.2.2** If the Owner's investigation confirms the presence of Hazardous Materials which present a risk of injury or damage which will not be adequately protected against by the Contractor's reasonable precautions, then the Work in the affected area must not thereafter be resumed except at the written direction of the Owner. The Work in the affected area will be resumed promptly (i) in the absence of a finding of Hazardous Material by the Owner, (ii) upon the removal, containment or remediation of the Hazardous Materials, or (iii) upon the establishment of appropriate safety precautions.

**§ 16.2.3** When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contractor may request a change in the Contract Sum or Contract Time if the Contractor incurs additional costs on account of or is delayed by the need to remove, contain or remediate Hazardous Materials which has not been rendered harmless at the Site unless the Contractor is responsible for same under the Agreement.

## **ARTICLE 17 INSURANCE AND BONDS**

**§ 17.1** The Contractor's insurance requirements are contained in Exhibit A to this Agreement and incorporated verbatim as if printed herein.

### **§ 17.2 OWNER'S LIABILITY INSURANCE**

The Owner is self-insured and is not required to maintain liability insurance.

### **§ 17.3 PROPERTY INSURANCE**

The Owner is self-insured and is not required to maintain property insurance.

### **§ 17.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 17.4.1** The Contractor shall provide performance and payments bonds in accordance with Chapter 2253 of the Texas Government Code.

**§ 17.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

## **ARTICLE 18 CORRECTION OF WORK**

**§ 18.1** The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

**§ 18.2** In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it

promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor an express written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. Nothing contained in this Section 18.2 shall be construed to establish a period of limitation with respect to other obligations of the Contractor has under the Contract Documents. Establishment of the one-year period for correction of the Work as described in Section 18.2 relates only to the specific obligation of the Contractor to correct the Work pursuant to the repair warranties provided, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations (including without limitation the Contractor's covenant that the Work will conform to the Contract Documents) other than specifically to correct the Work.

**§ 18.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

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

**§ 18.5** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

## **ARTICLE 19 MISCELLANEOUS PROVISIONS**

### **§ 19.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### **§ 19.2 GOVERNING LAW**

The Contract shall be governed by the law of the State of Texas.

### **§ 19.3 TESTS AND INSPECTIONS**

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or the appropriate public authority. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. The Owner shall bear all related costs of tests, inspections and approvals. However, Contractor shall bear the costs of tests, inspections or approvals that are required due to a failure of Contractor to construction the Work in compliance with the Contract Documents, including, but not limited to, re-tests or re-inspections.

### **§ 19.4 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 19.4.

**§ 19.5** In the event any term or provision of this Agreement is found to be void or unenforceable, in whole or in part, the offending term or provision shall be construed as valid to the maximum extent permitted by law, and the balance of the Agreement shall remain in full force and effect.

### **§19.6 ATTORNEYS' FEES, WAIVER, ESTOPPEL, SEVERABILITY**

**§ 19.6.1** In any arbitration, lawsuit or other proceeding between the parties, the prevailing party shall be entitled to recover its reasonable expenses (including reasonable attorneys' fees) from the other party.

**§ 19.6.2** No inspection (or the failure to inspect), payment, or interim acceptance by Owner or Architect shall constitute a final acceptance of the Work or any part thereof or release Contractor from its duties to perform the Work



or any part thereof or release Contractor from its duties to perform the Work in accordance with the Contract Documents.

**§ 19.6.3** The Contractor agrees that the Owner shall not be precluded or estopped by any action taken or thing done, written or oral, including, but not limited to, inspections made, payments made, or Final Completion of the Work from showing that the true and correct amount and character of the Work done and materials or equipment furnished by the Contractor do not in fact conform to the Contract Documents. The Contractor also agrees that the Owner shall not be precluded or estopped because of any action taken or not taken from demanding and recovering from the Contractor any damages resulting therefrom or from the Contractor's other failure to comply with the Contract Documents.

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

**§19.7.** Contractor hereby declares that it does not boycott Israel and will not boycott Israel during the term of this Agreement as described in Chapter 2270 of the Texas Government Code, as amended. Contractor further declares that it does not have a contract with or provide supplies or services to a foreign terrorist organization as defined in Chapter 2252 of the Texas Government Code, as amended.

**§19.8. Prevailing Wage.** Prevailing Wages must be paid to all laborers on the Project. Contractor shall provide and pay no less than the general prevailing rates for the Project location as determined in accordance with Applicable Laws, including Chapter 2258 of the Texas Government Code.

## **ARTICLE 20 TERMINATION OF THE CONTRACT**

### **§ 20.1 TERMINATION BY THE CONTRACTOR**

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or,
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped.

### **§ 20.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 20.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards Applicable Laws, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 actually or constructively abandons, or puts Owner on actual or constructive notice that it intends to abandon the Project.

**§ 20.2.2** In completing the Work following Termination for Cause pursuant to Section 20.2.1, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such completion work and related services on the basis of sole source procurement and other applicable exemptions pursuant to Sections 262.003 and 262.024 of the Texas Local Government Code. Owner has the right to select the completion contractor that will be provided by the surety in the event of takeover under the performance bond. In the event of a

claim by Owner for completion costs following termination by Owner pursuant to Section 20.2.1 or abandonment by Contractor, the exercise of Owner's rights under this section shall not be grounds for challenging the reasonableness of costs incurred or the Owner's damages.

**§ 20.2.3** When any of the above reasons exist, the Owner, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' written notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient.

**§ 20.2.4** When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 20.2.5** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, attorneys' fees, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

### **§ 20.3 TERMINATION BY THE OWNER FOR CONVENIENCE**

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and direct job costs incurred by reason of such termination. Contractor shall not be entitled to payment for Work not performed, nor to overhead or profit on Work not performed. The amounts owing by the Owner to Contractor pursuant to this Section shall be as specified in Contractor's Final Application for Payment approved by Owner. Owner, or a replacement contractor or another designee of Owner, shall, with respect to all subcontracts and purchase orders which Owner does not elect to terminate or cause Contractor to terminate, assume the obligations of Contractor under such subcontracts and purchase orders covering the unperformed parts of the Work and properly entered into in accordance with the Agreement. In addition to payment for the Work performed prior to the effective date of termination, Owner or a replacement contractor shall be entitled to take possession of the Work and use copies of all of the files relating to the performance of the Work of Contractor in completing the Work, but excluding any confidential or proprietary information of or regarding Contractor. Contractor shall take actions necessary, or that the Owner or Owner's Project Manager may direct, for the protection and preservation of the Work after termination.

## **ARTICLE 21 CLAIMS AND DISPUTES**

**§ 21.1** Claims, disputes and other matters in question arising out of or relating to this Contract and asserted by Contractor against Owner, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Sections 15.5.3 and 15.5.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

**§ 21.2** If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

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

This Agreement entered into as of the day and year first written above.

« »

**OWNER** (Signature)

« »« »

(Printed name and title)

« »

**CONTRACTOR** (Signature)

« »« »

(Printed name and title)





**Exhibit A to the AIA A107-2007.**  
**Owner's Insurance Requirements of Contractor**

**1. Specific Insurance Requirements**

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

Insurance	Coverage/Limits	Other Requirements
Commercial General Liability (Occurrence Basis)	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 Per Occurrence</li> <li>▪ \$2,000,000 General Aggregate</li> <li>▪ \$2,000,000 Products/Completed Operations Aggregate</li> <li>▪ \$1,000,000 Personal And Advertising Injury</li> <li>▪ Designated Construction Project(s) General Aggregate Limit</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CG 00 01</li> <li>▪ Additional insured status shall be provided in favor of Owner Parties on a combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01.</li> <li>▪ This coverage shall be endorsed to provide primary and non-contributing liability coverage. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and will not seek contribution from any other insurance held by Owner Parties, with Owner Parties' insurance being excess, secondary and non-contributing.</li> <li>▪ Stop Gap coverage shall be provided if any work is to be performed in a monopolistic workers' compensation state.</li> <li>▪ The following exclusions/limitations (or their equivalent(s), are prohibited: <ul style="list-style-type: none"> <li>○ Contractual Liability Limitation CG 21 39</li> <li>○ Amendment of Insured Contract Definition CG 24 26</li> <li>○ Limitation of Coverage to Designated Premises or Project, CG 21 44</li> <li>○ Exclusion-Damage to Work Performed by Subcontractors On Your Behalf, CG 22 94 or CG 22 95</li> <li>○ Exclusion-Explosion, Collapse and Underground Property Damage Hazard, CG 21 42 or CG 21 43</li> <li>○ Any Classification limitation</li> <li>○ Any Construction Defect Completed Operations exclusion</li> <li>○ Any endorsement modifying the Employer's Liability exclusion or deleting the exception to it</li> <li>○ Any endorsement modifying or deleting Explosion, Collapse or Underground coverage</li> <li>○ Any Habitational or Residential exclusion applicable to the Work</li> <li>○ Any "Insured vs. Insured" exclusion except Named Insured vs. Named Insured</li> <li>○ Any Punitive, Exemplary or Multiplied Damages exclusion</li> <li>○ Any Subsidence exclusion</li> </ul> </li> </ul>

Business Auto Liability	Amount of coverage shall be no less than: ▪ \$1,000,000 Per Accident	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CA 00 01</li> <li>▪ Arising out of any auto (Symbol 1), including owned, hired and nonowned</li> </ul>
Workers' Compensation and Employer's Liability	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ Statutory Limits</li> <li>▪ \$1,000,000 Each Accident and Disease</li> <li>▪ Alternate Employer endorsement</li> <li>▪ USL&amp;H must be provided where such exposure exists.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The State in which work is to be performed must listed under Item 3.A. on the Information Page</li> <li>▪ Such insurance shall cover liability arising out of the Contractor's employment of workers and anyone for whom the Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.</li> <li>▪ Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Contractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Contractor and Owner. Where Contractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Contractor is strictly prohibited from subletting any of its work without the express written agreement of Owner.</li> </ul>
Builders Risk	<ul style="list-style-type: none"> <li>▪ Coverage shall be provided in an amount equal at all times to the full contract value, including change orders, and cost of debris removal for any single occurrence.</li> <li>▪ Coverage shall be at least as broad as an unmodified ISO Special form, shall be provided on a completed-value basis, and shall be primary to any other insurance coverage available to the named insured parties, with that other insurance being excess, secondary and non-contributing.</li> <li>▪ The policy must provide coverage for: <ul style="list-style-type: none"> <li>○ Agreed Value Included</li> <li>○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse Included</li> <li>○ Debris removal additional limit \$1,000,000</li> <li>○ Earthquake and Earthquake Sprinkler Leakage \$5,000,000</li> <li>○ Flood \$5,000,000</li> <li>○ Freezing Included</li> <li>○ Mechanical breakdown including hot &amp; cold testing Included</li> <li>○ Ordinance or law \$1,000,000</li> <li>○ Pollutant clean-up and removal \$ 25,000</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Insureds shall include Owner, General Contractor, all Loss Payees and Mortgagees, and subcontractors of all tiers in the Work as Insureds.</li> <li>▪ Such insurance shall cover: <ul style="list-style-type: none"> <li>○ all structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling;</li> <li>○ all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site;</li> <li>○ all property including materials and supplies on site for installation;</li> <li>○ all property including materials and supplies at other locations but intended for use at the site;</li> <li>○ all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and</li> <li>○ other Work at the site identified in the Agreement to which this Exhibit is attached.</li> </ul> </li> <li>• No protective safeguard warranty shall be permitted.</li> <li>• The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed This insurance shall be maintained in effect, unless otherwise provided for the Agreement Documents, until the earliest of: <ul style="list-style-type: none"> <li>○ the date on which all persons and organizations</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Preservation of property</li> <li>○ Theft</li> <li>● Deductible shall not exceed</li> <li>○ All Risks of Direct Damage, Per Occurrence, except</li> <li>○ Named Storm</li> <li>○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence</li> <li>○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V</li> </ul>	<p>Included</p> <p>Included</p> <p>\$10,000</p> <p>2% subject to \$50,000 minimum</p> <p>\$100,000</p> <p>\$100,000</p>	<p>who are insureds under the policy agree that it shall be terminated;</p> <ul style="list-style-type: none"> <li>○ occupancy, in whole or in part;</li> <li>○ the date on which release of substantial completion is executed; or</li> <li>○ the date on which the insurable interests of Contractor in the Covered Property has ceased.</li> <li>● A waiver of subrogation provision shall be provided in favor of all insureds.</li> </ul>
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## 2. General Insurance Requirements

### A. Definitions. For purposes of this Agreement:

- i. "ISO" means Insurance Services Office.
- ii. "Contractor" shall include subcontractors of any tier.
- iii. "Owner Parties" means Karnes County, Texas ("Owner"), (b) the Project, (c) any lender whose loan is secured by a lien against the Work, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (e) any directors, officers, employees, or agents of such persons or entities, and (f) others as required by the Construction Documents.

### B. Policies.

- i. Contractor shall maintain such General Liability in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall provide written representation to Owner stating Work completion date.
- ii. All policies must:
  - a. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed.
  - b. Provide a waiver of subrogation in favor of Owner Parties on all insurance coverage carried by Contractor, whether required herein or not.
  - c. Contain an endorsement providing for thirty (30) days prior written notice of cancellation to Owner.
  - d. Be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.
- iii. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.
- iv. Contractor shall provide to the Owner a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to the Owner prior to the expiration of the previous policy.
- v. Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

### C. Limits, Deductibles and Retentions

- i. The limits of liability may be provided by a single policy of insurance or by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
- ii. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the Owner, except as otherwise specified herein. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk. The Contractor shall not be reimbursed for same

**D. Forms**

- i. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, Owner will have the right to require other equivalent forms.
- ii. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Owner.

**E. Evidence of Insurance.** Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
  - a. Owner as certificate holder at Owner's mailing address;
  - b. Insured's name, which must match that on this Agreement;
  - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
  - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
  - e. Additional Insured status in favor of Owner Parties;
  - f. Amount of any deductible or self-insured retention in excess of \$25,000;
  - g. Designated Construction Project(s) General Aggregate Limit;
  - h. Primary and non-contributory status;
  - i. Waivers of subrogation; and
  - j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
  - a. General Liability Additional insured endorsement(s);
  - b. General Liability Schedule of Forms and Endorsements page(s); and
  - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

**F. Contractor Insurance Representations to Owner Parties**

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Contractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If the Contractor shall fail to remedy such breach within five (5) business days after notice by the Owner, the Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Contractor by the Owner. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance, at the Contractor's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Construction Agreement.

**G. Insurance Requirements of Contractor's Subcontractors**

- i. Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.
- ii. The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means of recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

**H. Use of the Owners Equipment**

The Contractor, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use. If the Contractor or any of its agents, employees, subcontractors or suppliers utilize any of the Owners equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Owner, the Contractor shall defend, indemnify and be liable to the Owner Parties for any and all loss or damage which may arise from such use.

**I. Release and Waiver**

The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Contractor and/or its subcontractors pursuant to this Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**